

**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF
THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER F. PRIVATE SCHOOLS
PART 126. LICENSED PRIVATE CAREER SCHOOLS OR LICENSED
PRIVATE SCHOOLS**

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SECTION 126.1. DEFINITIONS

As used in this Part:

126.1(a) **Acceptable, adequate, appropriate, proper, reasonable, satisfactory, sufficient, and suitable** shall mean educationally appropriate and/or beneficial to students in the judgment of the commissioner.

126.1(b) **Approved** means approved by the commissioner based upon a finding of educational appropriateness and/or benefit to students.

126.1(c) **Conform** means to meet or satisfy in the judgment of the commissioner.

126.1(d) **Curriculum** means a sequence of courses which together comprise a program of instruction and is 100 clock hours or longer in duration.

126.1(e) **Course** means a sequence of units of instruction in a given subject area which is a component of a program of instruction or curriculum, or which has an educational or vocational objective of its own and is less than 100 clock hours in duration.

126.1(f) **Diploma or certificate of completion** means a document evidencing the successful completion of a curriculum or course.

126.1(g) **Documentation of entrance requirements** means a copy of a student's high school diploma or transcript, GED, original ability to benefit examination answer sheet indicating a passing score, appropriate student certifications as specified by the approved curriculum, or other approved documentation as determined by the commissioner, including but not limited to a college degree.

126.1(h) **Grades** means letters, number or symbols used to indicate the quality of work performed by students.

126.1(i) **Instruction** means any method or procedure used by the school faculty to impart knowledge or develop skills.

126.1(j) **Instructional hour** means an instructional unit of time consisting of a minimum of 50 minutes and a maximum of 60 minutes.

126.1(k) **Properly or in proper manner** means in the manner prescribed by the commissioner.

126.1(l) **Recognized** means accredited by an institutional accrediting agency recognized for this purpose by the United States Department of Education or determined by the department to be equivalent in scope and content to a registered program unless the context calls for a different meaning.

126.1(m) **Standards**, unless otherwise indicated by the context, means the criteria established or used by the commissioner to implement this Part.

126.1(n) **Practical experience** means full-time work experience, or its part time equivalent, that is acceptable to the Commissioner using skills included in the occupation for which the program is designed and approved.

126.1(o) **Gross tuition** means all revenues received for instruction by or on behalf of the student, prior to any refund, from all sources, including but not limited to, lending institutions, Federal agencies, State agencies, and any other entity or organization. Gross tuition shall not include income from registration fees, the sale of books, supplies, services, kits, uniforms or equipment.

126.1(p) **School** means a licensed private career school or licensed private school as defined in section 5001 of the Education Law.

126.1(q) **Department** means the New York State Education Department.

126.1(r) **Marking period** means the period of time established by the school to measure a student's progress in a course or curriculum.

126.1(s) **Attendance register** means a complete record of student attendance containing the information required by section 126.4(e) of this Part which is maintained by the school as a bound document or computer printout for each course, or each curriculum if there are no courses.

126.1(t) **Non-occupational course** means a course for personal enrichment or self-improvement with no occupational performance objective and under 40 hours in length.

126.1(u) **Reviewed financial statement** means a financial statement reported in accordance with standards established by the American Institute of Certified Public Accountants and conducted by a licensed public accountant or a certified public accountant.

126.1(v) **Occupationally required credential** means a professional license, vendor certification, or other credential that is required for employment in the occupation or where employment in the occupation without such a credential is diminished.

126.1(w) **Audited financial statement** means a financial statement prepared by a licensed public accountant or a certified public accountant in accordance with generally accepted accounting principles issued by the American Institute of Certified Public Accountants.

126.1(x) **Certified English as a second language schools** or **Nonpublicly funded ESL schools** means schools that provide instruction in English as a second language; receive no public funding, including but not limited to public funding received as a result of participation in student financial aid general award programs pursuant to articles 13 and 14 of the Education Law; and operate on a for-profit basis.

126.1(y) **Nationally recognized vendor** means an independent, industry recognized, educational products provider offering curriculum and instructor qualifications to third party educational service providers via the internet and other appropriate media.

126.1(z) **Significant educational change** means, for the purposes of section 5002(3)(c)(2) of the Education Law and this Part, sufficient substantive changes in a student's educational program, in terms of curriculum, resources and the quality and quantity of faculty, as to indicate that the program is not substantially equivalent to the initial offering to the student.

126.1(aa) **Commissioner** means the Commissioner of Education.

126.1(bb) **Solicit** or **Procure** means inducing or attempting to induce a prospective student to sign an enrollment agreement with a licensed private career school, private career school or a certified English as a second language school as defined in section 5001 of the Education Law.

126.1(cc) **Enroll** means the execution of an enrollment agreement between a prospective student and a licensed private career school or private career school or a certified English as a second language school as defined in section 5001 of the Education Law.

126.1(dd) **Online education marketplace** shall mean a website or other internet-based online technology tool with which a licensed private career school or private career school or certified English as a second language school as defined in section 5001 of the Education Law contracts for marketing or advertising services, or services in connection with the collection of tuition and/or fees, to the extent authorized in section 5004(3) of the Education Law.

SECTION 126.2. CONDUCT OF THE SCHOOL

126.2(a) Fees or other charges for services or products produced in the course of instruction by students or instructors shall not be collected from the public unless the commissioner approves the collection of such fees or charges for the purpose of facilitating adequate practice in the curriculum or course.

126.2(b) A school shall provide the same instruction, tools, equipment or instructional supplies, and charge the same tuition rates and other fees or charges, to all student or groups of students in like circumstances, unless otherwise approved by the commissioner.

126.2(c) Enrollment of students shall not be sought by:

126.2(c)(1) Assuring or seeming to assure employment in any business, establishment or occupation.

126.2(c)(2) Including in advertising or promotional material representations with respect to potential earnings in entry level employment or employment with experience, unless such representations can be documented for the graduates of the school. All such advertising or promotional material shall include the number and percent of graduates employed at the advertised salary level listed by year of graduation and may be presented in conjunction with State and national labor statistics.

126.2(c)(3) Including in advertising or promotional material representations of job placement rates, unless such representations can be documented with the data required under section 126.10 of this Part.

126.2(c)(4) Misrepresentations of the cost of instruction or of the education, experience or abilities required for successful completion of the course and the utilization thereof.

126.2(c)(5) Use of such phrases as “university,” “college,” or “professional school,” or other terminology which connotes an institution which confers the associate or higher degrees, except where the school has been authorized by the Regents to confer such degrees and has been authorized to use the word “college” in its corporate name pursuant to section 3.29(c) of this Title.

126.2(d) Each school shall submit to the commissioner for approval all scholarship and grant programs offered by the school. In approving such programs, the commissioner shall consider the following factors: the name of the scholarship program; the number and amount of scholarships; period of time covered by the scholarship; the eligibility and application criteria; academic and award criteria; source of scholarship funds; the manner in which scholarships are paid; and that such funds are collected and applied in accordance with section 5002(1)(b-1) of the Education Law; provisions for awarding scholarships to alternate candidates; standards for continued scholarship eligibility; and the names and affiliation of all award committee members. Each school shall assure that all scholarship recipients meet department-mandated entrance requirements.

SECTION 126.3. ADVERTISING

126.3(a) Advertising conducted by or on behalf of a school shall not be false, misleading, deceptive or fraudulent and shall be consistent with the provisions of article 22-A of the General Business Law.

126.3(b) Statements and representations in all forms of advertising and promotion shall be fairly and clearly presented, accurate, and restricted to facts which can be substantiated. All forms of advertising and promotion by or on behalf of a school, shall identify the school for which the advertising or promotion was undertaken, and shall be available for inspection at the school by the commissioner, in accordance with section 126.11(a)(3) of this Part.

126.3(c) Endorsements, commendations or recommendations from any person or persons, firm, corporation or other organization shall be used only with the identification and qualifications of such person, persons, firm, corporation or other organization (*e.g.*, graduate, employer) and with their written consent. Such consent shall be on file with the school, and shall be available for examination. No consideration for any such endorsement, commendation or recommendation shall be offered or paid by a school. The date of any such endorsement, commendation or recommendation shall be included in the advertising matter unless it is less than two years old.

126.3(d) Illustrations in all advertising matter shall relate solely to the school or shall be clearly designated otherwise.

126.3(e) Services or articles produced in the process of instruction shall not be advertised for sale in connection with the school unless such practice is approved by the commissioner.

126.3(f) Pursuant to section 5002(7)(b) of the Education Law, beginning on January 1, 2000 all schools shall include in their advertising, promotional material or letterhead the phrase, "Licensed by the State of New York, New York State Education Department". Such statement shall also be accompanied by the symbol issued by the commissioner to indicate such status.

SECTION 126.4. STANDARDS AND METHODS OF INSTRUCTION

126.4(a) Schools shall conduct only those curricula or courses which have been approved by the commissioner, and shall conduct such curricula or courses in accordance with section 5002(4) and (5) of the Education Law and this Part; except for those programs which have been deemed exempt from the requirements of article 101 of the Education Law and this Part, as prescribed in section 5001(2-b) of the Education Law. The commissioner shall approve the appropriate student-to-teacher ratio for each course or curricula. Schools shall ensure that student enrollment on the attendance register does not exceed the approved ratio after the first week of instruction. Pursuant to section 5002(4)(c) of the Education Law, for all courses or curricula reviewed by an expert or outside consultant not employed by the department, the department shall retain the expert or outside consultant and the school shall bear the expense of the expert or outside consultant, in addition to the curriculum or course application fee set forth in section 5002(4)(a) of the Education Law. The cost of a review by an expert or outside consultant not employed by the department shall be set according to the following schedule:

126.4(a)(1) for courses or curricula up to 100 clock hours, the reimbursement shall be \$200;

126.4(a)(2) for courses or curricula between 101 and 400 clock hours, the reimbursement shall be \$300;

126.4(a)(3) for courses or curricula between 401 and 700 clock hours, the reimbursement shall be \$400;

126.4(a)(4) for courses or curricula between 701 and 1000 clock hours, the reimbursement shall be \$500;

126.4(a)(5) for courses or curricula between 1001 and 1400 clock hours, the reimbursement shall be \$600;

126.4(a)(6) for courses or curricula between 1401 and 1800 clock hours, the reimbursement shall be \$700;

126.4(a)(7) for courses or curricula above 1800 clock hours, the reimbursement shall be \$800.

126.4(b) The director of the school shall cause to be prepared data concerning curricula or courses of study and methods of instruction in sufficient detail to clearly indicate the nature of the proposed instruction. He shall submit such data to the commissioner in such form as said commissioner shall direct, accompanied by a request for approval.

126.4(c) Data submitted for approval of curricula or courses or revisions thereof given on school premises shall include the following information:

126.4(c)(1) the name and the educational or occupational objective of the curriculum or course;

126.4(c)(2) the minimum entrance requirements, and complete information with respect to any aptitude tests administered to prospective students in connection therewith, including wherever

possible a nationally recognized test appropriate to the course of instruction;

126.4(c)(3) the minimum and/or maximum instructional hours and the allocation of time to each portion of the curriculum or course;

126.4(c)(4) the daily and weekly schedule of instruction;

126.4(c)(5) a description of the method of instruction, indicating the number of instructional hours to be devoted to classroom activities and shop or laboratory practice, and where appropriate, practice and experience components outside the school premises, and the relation between the classroom and practice phases of the curriculum or course;

126.4(c)(6) the tuition and other charges and the method of payment thereof;

126.4(c)(7) an itemized list of equipment;

126.4(c)(8) an itemized list of the small tools, books and supplies loaned or furnished to students;

126.4(c)(9) a detailed floor plan of the premises occupied by the school, indicating all facilities;

126.4(c)(10) the language in which instruction is to be provided and an appropriate justification required by the commissioner for offering instruction in a language other than English;

126.4(c)(11) the manner in which the course or curriculum is apportioned into quarters, semesters or terms pursuant section 126.7 of this Part; and

126.4(c)(12) for applications for approval of curriculum certified by a nationally recognized vendor pursuant to section 5002(4)(e) of the Education Law, the school shall provide, in addition to the information prescribed in paragraphs (1) through (11) of this subdivision, an identification of the vendor and the vendor-maintained location that shall enable the commissioner to determine that the curriculum proposed by the school is in its original format.

126.4(d) Data submitted for approval of curricula or courses of study or revisions thereof given by correspondence or home study or by internet transmission shall include the following information:

126.4(d)(1) the name and the educational or occupational objective of the curriculum or course;

126.4(d)(2) the minimum entrance requirements, and complete information with respect to any aptitude tests administered to prospective students in connection therewith;

126.4(d)(3) the complete instructional units, in detail, as they are to be furnished to the student, showing the instructional content to be taught, the method or procedure to be followed, and the types of skills or knowledge to be learned;

126.4(d)(4) the approximate time necessary for completion of each instructional unit;

126.4(d)(5) the method of mailing or transmitting and correcting instructional units and the manner in which remedial instruction is to be given to individual students;

126.4(d)(6) the language in which instruction is to be provided and an appropriate justification required by the commissioner for offering instruction in a language other than English; and

126.4(d)(7) the manner in which the course or curriculum is apportioned into quarters, semesters or terms pursuant to section 126.7 of this Part.

126.4(e) Each school shall establish and maintain attendance policies and regulations, acceptable to and approved by the commissioner, in accordance with the following requirements:

126.4(e)(1) An attendance register shall be maintained by the school and be available for inspection by the department for each course or curriculum, as applicable and shall contain the following:

126.4(e)(1)(i) the room number, schedule and approved name of the course or curriculum;

126.4(e)(1)(ii) the start and completion dates of the course or curriculum;

126.4(e)(1)(iii) the time and date of each class, laboratory or session;

126.4(e)(1)(iv) a daily record of attendance for each student which shall identify each student as “present,” “absent,” “late” or “make-up;”

126.4(e)(1)(v) the name and signature of the instructor for each class, laboratory or session;

126.4(e)(1)(vi) verification of the instructor by oath or affirmation of the accuracy of the attendance register;

126.4(e)(1)(vii) any leaves of absence;

126.4(e)(1)(viii) last date of attendance for any student who drops out or is discontinued;

126.4(e)(1)(ix) the marking period and grades for each student for each marking period, unless otherwise approved by the commissioner; and

126.4(e)(1)(x) any other information required by the commissioner.

126.4(e)(2) A school shall determine the academic standing of each student in accordance with the following:

126.4(e)(2)(i) Schools shall use a cumulative grade point average of 70 percent or higher, or its equivalent in the letter-grade scale approved in the school’s catalog, when determining the minimum allowable academic standing of each student at each evaluation point.

126.4(e)(2)(ii) Schools shall use a cumulative attendance rate of 70 percent or higher when determining the minimum allowable cumulative attendance of each student at each evaluation point. Attendance rate shall be calculated by the number of instructional hours attended divided by the number of instructional hours offered.

126.4(e)(2)(iii) Schools offering programs of seven weeks or more shall evaluate the academic standing of students at intervals of no less than the midpoint and endpoint of each quarter or term, as defined on the student enrollment agreement.

126.4(e)(2)(iv) Schools offering programs of less than seven weeks shall evaluate the academic standing of students at no less than the midpoint of the program, as defined on the student enrollment agreement.

126.4(e)(2)(v) Students who do not meet the minimum cumulative grade point average or the minimum attendance rate at the midpoint evaluation shall be provided a written notice of warning.

126.4(e)(2)(vi) Students who have been provided a written notice of warning at the midpoint evaluation and who do not meet the minimum cumulative grade point average or the minimum attendance rate at the conclusion of each quarter or term as defined in the student enrollment agreement shall be placed on probation or withdrawn from the program.

126.4(e)(2)(vii) The maximum period of probation shall be the conclusion of the next consecutive quarter or term after the student has been placed on probation, as defined in the student enrollment agreement.

126.4(e)(2)(viii) Schools shall offer academic counseling and remediation for all students placed on probation.

126.4(e)(2)(ix) Students who have been placed on probation and who do not meet the minimum cumulative grade point average or the minimum attendance rate at the conclusion of the probation period shall be withdrawn from the program. Prior to withdrawal, and at the school's discretion, students may be afforded no more than thirty days to make up assignments or instructional hours to achieve satisfactory academic standing as required by this section.

126.4(e)(2)(x) No student shall graduate from a program with less than a 70 percent cumulative grade point average, or its equivalent in the letter-grade scale approved in the school's catalog, or earning less than 70% of the program's total instructional hours, unless otherwise mandated by curriculum requirements.

126.4(e)(2)(xi) Schools shall provide students a copy of each academic standing evaluation. For students who fail to meet satisfactory academic progress, the evaluation must contain the student's and director's signatures.

126.4(e)(3) Each school shall have a written policy concerning tardiness and early dismissal.

126.4(e)(4) For purposes of determining the proportion of the time a student was enrolled in a course or curriculum when such student leaves before finishing the entire course or curriculum, the school may regard as attendance such absences and tardiness as may have occurred between the first and last day of attendance.

126.4(e)(5) Any make-up session for attendance purposes shall be approved by the licensed school director, and shall consist of instruction in that portion of the course or curriculum which was not received by the student as a result of absences. A record of make-up sessions shall be maintained in the attendance register. Any charge for make-up sessions shall be expressed on the enrollment agreement and in the school's catalog.

126.4(e)(6) In the case of a prolonged illness or accident, death in the family, or other special circumstances that make attendance impossible or impractical, a leave of absence may be granted to the student if requested in writing by the student or his designee. The approval of such leaves of absence shall be in writing by the school director. No monetary charges or accumulated absences may be assessed to the student during a leave of absence. When a student returns from an approved leave of absence, the student shall be placed in the instructional program at the point commensurate with the skill level retained by the student at the time of his or her return in accordance with the following:

126.4(e)(6)(i) for leaves of absence less than 30 calendar days, the school shall assess the student's retention level either through a counseling session with the student or by employing a written or oral evaluation instrument designed to measure a student's level of retention in the instructional program; or

126.4(e)(6)(ii) for leaves of absence 30 calendar days or longer, the school shall assess a student's retention level either through a written or oral evaluation instrument designed to measure a student's level of retention in each course in the curriculum; and

126.4(e)(6)(iii) documentation that such evaluation took place pursuant to subparagraphs (i) or (ii) of this paragraph along with the actual evaluation instruments, student results and evidence the student was appropriately placed according to skill level shall be placed in the student's permanent file.

126.4(e)(7) Schools may establish attendance requirements permitting less absence and tardiness.

126.4(e)(8) School policy and regulations relating to attendance and leaves of absence shall be submitted to the department for approval prior to implementation, and shall be published in the school catalog.

126.4(f) Any required orientation to school policies or practices, or a general overview of courses shall not be included in the total instructional hours of a course or curriculum, unless such orientation is necessary for the successful completion of the program, given within the first week of instruction as defined in section 126.7 of this Part and approved by the commissioner.

126.4(g) All courses or curricula offered at no cost to a student by a school shall comply with all requirements of this Part.

126.4(h) Schools may provide instruction in English as a second language in accordance with the following:

126.4(h)(1) all teachers shall be appropriately licensed pursuant to section 126.6(g) of this Part.

126.4(h)(2) where an English as a second language component is combined with an occupational education component into one program and the student signs an enrollment agreement for such a program, the following conditions shall be met:

126.4(h)(2)(i) prior to initiating the occupational education component the student shall have completed the English as a second language component and shall have attained a score on a reading test, approved by the commissioner, demonstrating sufficient proficiency in reading English as required by the commissioner for such a program;

126.4(h)(2)(ii) the English as a second language component shall not exceed 50 percent of the total clock hours for the program;

126.4(h)(2)(iii) upon application for approval of such a curriculum, when a school requests permission to accept students at the beginning or basic English as a second language level, the school shall demonstrate that the English as a second language component is designed to provide the student with the necessary reading skills to comply with the provisions of subparagraph (i) of this paragraph; and

126.4(h)(2)(iv) the English as a second language component shall be coterminous with a quarter or term as defined in section 5002(3) of the Education Law unless otherwise approved by the commissioner. In all instances, the student's enrollment agreement shall clearly state that if a student fails to pass the reading test as required in subparagraph (i) of this paragraph, then the student may not continue in the program.

126.4(i) Notwithstanding any other provisions of this Part, non-occupational courses, as defined in section 126.1(t) of this Part, shall be subject to the following alternate educational and curriculum standards:

126.4(i)(1) an application for a non-occupational course shall be submitted in a format prescribed by the commissioner;

126.4(i)(2) upon receipt of a completed application, the department shall notify a school within 20 business days as to whether the application is approved;

126.4(i)(3) students may be admitted into a non-occupational course based upon a personal interview, except where a specialized skill is needed by the applicant in order to successfully complete the course;

126.4(i)(4) teachers of non-occupational courses shall meet the requirements of section

126.6 of this Part, except that teachers who provide instruction in non-occupational courses only shall meet the requirements for a special lecturer as set forth in section 126.6(m) of this Part;

126.4(i)(5) an enrollment agreement for a non-occupational course shall conform to the requirements set forth in section 126.7 of this Part and in addition, shall include the statement: “This course is not intended to provide instruction which will result in the student's acquisition of occupational skills. Placement assistance by the school is not available for this course.”;

126.4(i)(6) non-occupational courses shall be clearly identified as such within the school catalog and shall include the statement: “Non-occupational courses are not intended to provide instruction which will result in the student's acquisition of occupational skills.”; and

126.4(i)(7) certificates of completion or diplomas awarded for the completion of a non-occupational course shall include the term “non-occupational” or “personal enrichment” on that certificate or diploma.

SECTION 126.5. EQUIPMENT AND HOUSING

126.5(a) A school shall have classrooms, laboratories, shops and other facilities for instruction and administration which, in the judgment of the commissioner, are satisfactory for the proper conduct of the school.

126.5(b) The instructional devices, machines, apparatus, supplies and other equipment shall be adapted to the courses of study being offered and adequate for satisfactory instruction, as approved by the commissioner. Any course or curriculum containing a skill component involving the use of machines shall maintain a student-to-machine ratio of one-to-one, unless otherwise approved by the commissioner.

126.5(c) In addition to adequate and satisfactory classrooms, laboratories and shops, a private school shall, as appropriate, provide a library, administrative and supervisory offices, restrooms and toilet facilities and a checkroom and/or lockers for student use. Such rooms or space shall be properly equipped and large enough to meet the needs of students and faculty.

126.5(d) The buildings, rooms or space in which staff and students are housed for any purpose while attending a school, and all facilities and equipment therein, shall meet the standards for school purposes of local fire, health and building authorities.

126.5(e) Schools shall have their facilities approved by the commissioner upon initial application for a license and every renewal of a license thereafter, sale or transfer of a school license, relocation of a school, renovation or alteration of a school's facilities or reorganization of instructional space or equipment.

SECTION 126.6.
QUALIFICATIONS OF TEACHING AND MANAGEMENT PERSONNEL

126.6(a) Each applicant shall submit, in a format specified by the commissioner, such data concerning the education, training, experience and other qualifications, including supporting documentation, of the administrative, supervisory and instructional staff of the school as the commissioner may require. Upon submission of an application for a director, the owner shall attest to the applicant's ability to comply with the provisions of this section. Pursuant to section 5002(6) of the Education Law, all applications for teachers and directors shall be mailed or submitted electronically to the commissioner four days prior to employment at the school, and must be completed, with all supporting materials and fees required for evaluation of the file, within 20 days thereafter. However, the commissioner, for good cause shown, may extend the time within which to complete the application. When a complete application is made, the commissioner shall act upon such application within 30 days. If no written denial is made within 30 days, the application shall be deemed to be approved until the commissioner acts upon it or until the end of the term or semester, whichever occurs first. If a written denial is made after the 30-day period, the commissioner may allow the applicant to teach at the school for the remainder of the term or semester if the commissioner determines that the removal of the teacher would not be in the best interest of students. If a teacher or director application, submitted to the department is mailed and postmarked, or electronically submitted less than four days prior to the employment of such individual, is evaluated and is subsequently determined that the applicant is not qualified pursuant to the provisions of this section, the school may be subject to disciplinary action pursuant to section 5003 of the Education Law, if such conduct constitutes a pattern of abuse. As used in this subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-month period.

126.6(b) The commissioner shall issue the following types of licenses and permits:

126.6(b)(1) Director's license or permit--issued to qualified directors.

126.6(b)(2) Teacher's license or permit--issued to qualified instructors or supervisors.

126.6(c) Directors' licenses shall be valid only for the school for which they are issued. No individual may be employed as a director at more than one school without the approval of the commissioner.

126.6(c)(1) Teachers' permits or licenses, issued on or after December 15, 2012, shall be valid at any licensed private career school only for the curricula, courses/content areas or occupations listed on the license.

126.6(c)(2) Teachers' permits or licenses issued prior to December 15, 2012, including licenses for teaching specific occupational subjects or specific subjects certified by a nationally recognized vendor, or the licenses approved pursuant to subdivision (k) of this section shall be valid only for the school or schools, curricula, courses/content areas or occupation indicated on the license, except that a teacher's license issued to a teacher in a registered business school/computer training facility on or after January 1, 1987 shall be valid at all licensed private career schools for the courses, curricula/content areas or occupation indicated on the

license. Teachers holding valid private school teacher licenses valid at only one school location shall have them replaced, at no cost, with licenses valid at any licensed school in the same subject or subjects and with the same expiration date as was listed on the previous teaching license.

126.6(d) Each licensed private career school shall employ a director who shall be responsible for all activities of the school or done in the name of the school. A director shall meet the requirements of this subdivision to be licensed by the department and, pursuant to section 5004(4-a) of the Education Law, may apply for a private school agent's certificate on forms prescribed by the commissioner without incurring the agent application fees.

126.6(d)(1) Preparation. Directors shall meet the preparation requirements for licensure prescribed in subparagraph (i) or (ii) of this paragraph, as applicable, and also the preparation requirement in subparagraph (iii) of this paragraph.

126.6(d)(1)(i) Directors of licensed private career schools shall meet the following preparation requirements:

126.6(d)(1)(i)(a) have completed an approved four-year high school program or hold a high school equivalency diploma; and

126.6(d)(1)(i)(b) have at least five years of acceptable practical experience in one or more of the courses taught in the school, or five years of acceptable teaching experience in one or more of the courses taught in the school, or five years of acceptable administrative or supervisory experience, or a combination of such acceptable experience amounting to at least five years; or

126.6(d)(1)(i)(c) have received an appropriate baccalaureate or higher degree upon completion of an approved college program in the field of business administration, educational administration, or public administration.

126.6(d)(1)(ii) In addition to meeting the preparation requirements of subparagraph (i) of this paragraph all directors shall have completed an approved 15 clock-hour course offered by the department in private school administration prior to receiving a full director license.

126.6(d)(1)(iii) Upon a finding by the commissioner that an applicant for licensure possesses education, training and/or experience that is substantially equivalent to a preparation requirement of this paragraph, the commissioner may accept such education, training and/or experience in lieu of meeting the preparation requirement of this paragraph.

126.6(d)(2) Directors shall be of good moral character, as determined by the commissioner.

126.6(d)(3) Directors shall have the administrative and educational competency to operate a school, as determined by the commissioner. The factors considered by the commissioner in evaluating administrative and educational competency shall include, but not be limited to, patterns of violations of the duties and responsibilities of a director relating to the administration of a school, as set forth in this Part and article 101 of the Education Law.

126.6(d)(4) Temporary permit requirements. Individuals who meet the preparation requirements of subparagraph (1)(i) of this subdivision may be issued a temporary permit, valid for one year, during which the requirement of subparagraph (1)(ii) of this subdivision shall be met. A full director's license shall not be issued until the candidate meets all applicable preparation requirements, prescribed in paragraph (1) of this subdivision.

126.6(d)(5) Duration of license.

126.6(d)(5)(i) A full director's license issued on or after May 25, 2000 shall be valid for the same period for which the school is licensed or registered and a renewal application for such license shall be submitted with the renewal application for the employing school.

126.6(d)(5)(ii) A permanent director's license issued prior to May 25, 2000, shall continue to be valid without renewal until such time as the director leaves the school and location for which the license is valid.

126.6(e) All teachers who have been issued a license or permit pursuant to the requirements of this section shall successfully complete an orientation to classroom management program within four weeks of employment at a licensed private career school, according to the following requirements:

126.6(e)(1) The orientation to classroom management program shall be developed by the licensed private school or registered business school/computer training facility and offered to all licensed teachers or teachers holding a permit.

126.6(e)(2) The topics for the orientation to classroom management program shall include, but not be limited to, information on adult learning styles, introduction to the syllabus, writing lesson plans, testing, the maintenance of attendance records, grading, discipline and teacher licensing requirements.

126.6(e)(3) A one-page checklist in a format prescribed by the commissioner, certifying the teacher's completion of the program, must be provided to the teacher and placed in the teacher's personnel file for review by department staff upon request.

126.6(f) All teachers in licensed private career schools shall meet the requirements of this subdivision.

126.6(f)(1) Teachers shall meet the following requirements:

126.6(f)(1)(i) have completed an approved four-year high school program or hold a valid high school equivalency diploma; and

126.6(f)(1)(ii) have the required preparation and training set forth in either clause (a) or (b) of this subparagraph:

126.6(f)(1)(ii)(a) at least two years of practical experience acceptable to the

commissioner in the subject area or occupation to be taught. Teaching experience will not be accepted in lieu of practical experience; or

126.6(f)(1)(ii)(b) for specific business subject areas only:

126.6(f)(1)(ii)(b)(1) the candidate shall hold a valid permit:

126.6(f)(1)(ii)(b)(1)(i) for a permit in general academic, an applicant shall have been awarded a baccalaureate or equivalent degree from an institution whose programs are registered or recognized by the department;

126.6(f)(1)(ii)(b)(1)(ii) for a permit in accounting, office skills, or management and marketing, an applicant shall have been awarded a baccalaureate or equivalent degree and 18 semester hour credits in approved course work appropriate for the instructional area of the permit from an institution whose programs are registered or recognized by the department. Such 18 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program;

126.6(f)(1)(ii)(b)(1)(iii) for a permit in English for speakers of other languages (ESOL), an applicant shall have been awarded a baccalaureate or equivalent degree from an institution whose programs are registered or recognized by the department; and either:

126.6(f)(1)(ii)(b)(1)(iii)(A) shall have successfully completed an approved 30-clock-hour course in teaching English for speakers of other languages (ESOL) from a proprietary school association recognized by the commissioner; or

126.6(f)(1)(ii)(b)(1)(iii)(B) shall have been awarded three semester hour credits in teaching ESOL from an institution whose programs are registered or recognized by the department;

126.6(f)(1)(ii)(b)(1)(iv) for a permit in computer applications or computer programming, an applicant either:

126.6(f)(1)(ii)(b)(1)(iv)(A) shall have been awarded a baccalaureate or equivalent degree and 18 semester hour credits in approved course work appropriate for the instructional area of the permit from an institution whose programs are registered or recognized by the department; provided that such 18 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program and that appropriate work experience may be substituted for up to six of the 18 semester hour credits; or

126.6(f)(1)(ii)(b)(1)(iv)(B) shall have been awarded an associate degree in computer science from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in the instructional area of the permit;

126.6(f)(1)(ii)(b)(1)(v) for a permit in hospitality management, an applicant either:

126.6(f)(1)(ii)(b)(1)(v)(A) shall have been awarded a baccalaureate in hospitality management from an institution whose programs are registered or recognized by the department; or

126.6(f)(1)(ii)(b)(1)(v)(B) shall have been awarded a baccalaureate or equivalent degree in another field and 12 semester hour credits in approved course work appropriate for a permit in hospitality management from an institution whose programs are registered or recognized by the department; provided that such 12 semester hour credits may be earned in the baccalaureate or equivalent program or may be credits earned in addition to credits earned in such a program, and shall have completed four years of appropriate work experience in hospitality management; or

126.6(f)(1)(ii)(b)(1)(v)(C) shall have been awarded an associate degree in hospitality management from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate work experience in hospitality management;

126.6(f)(1)(ii)(b)(1)(vi) for a permit in court reporting or paralegal, the applicant shall have been awarded a high school diploma or its equivalent, completed successfully an approved program in the instructional area of the permit, and completed two years of appropriate work experience;

126.6(f)(1)(ii)(b)(1)(vii) for a permit for travel and tourism, an applicant either:

126.6(f)(1)(ii)(b)(1)(vii)(A) shall have been awarded a high school diploma or its equivalent and shall have completed four years of appropriate work experience in travel and tourism; or

126.6(f)(1)(ii)(b)(1)(vii)(B) shall have been awarded an associate degree in travel and tourism from an institution whose programs are registered or recognized by the department and shall have completed two years of appropriate experience in the field of travel and tourism;

126.6(f)(1)(ii)(b)(1)(viii) for a permit to teach a specific subject from a curriculum certified by a nationally recognized vendor, an applicant shall hold certification as an instructor by the vendor, in accordance with section

5002(6)(c) of the Education Law;

126.6(f)(1)(iii) an exception may be made by the commissioner for an applicant who does not meet the requirements of subparagraph (i) or (ii) of this paragraph, if such applicant possesses qualifications sufficiently unique in the judgment of the commissioner to warrant such exception;

126.6(f)(1)(iv) if an occupationally required credential is required for the performance of any occupation other than teaching, the teacher shall also be required to hold such credential;

126.6(f)(1)(v) be of good moral character, as determined by the commissioner; and

126.6(f)(1)(vi) have the instructional competency to provide the instruction authorized by the license, as determined by the commissioner, based on factors to be considered by the commissioner which shall include, but shall not be limited to, patterns of violations of the requirements of this Part or article 101 of the Education Law, relating to the instruction of students.

126.6(f)(2) Teachers who meet the requirements of paragraph (1) of this subdivision and apply for a permit or license may be issued:

126.6(f)(2)(i) a temporary teacher's permit valid for one year, during which time a 30-clock-hour approved course in general teaching methods from a proprietary school association recognized by the commissioner or a three-semester-credit-hour course in general teaching methods from an institution whose programs are registered or recognized by the department shall be completed;

126.6(f)(2)(ii) a provisional teacher's license valid for a period of three years after completion of the requirements set forth in subparagraph (i) of this paragraph;

126.6(f)(2)(iii) a full teacher's license after completion of two additional 30-clock-hour approved professional education courses from a proprietary school association recognized by the commissioner or three additional semester credit hours in appropriate professional education from an institution whose programs are registered or recognized by the department during the period of validity of the provisional license. Such full teacher's license shall be valid for a period of four years, and a teacher shall apply for the renewal of such teacher's license every four years.

126.6(f)(3) A permanent teacher's license issued prior to May 25, 2000, shall continue to be valid without renewal until such time as the teacher leaves the school and location for which the license is valid.

126.6(f)(4) Provisional licenses. Applicants for a provisional license shall meet the appropriate requirements set forth in subparagraph (1) of this subdivision and shall also meet the following requirements:

126.6(f)(4)(i) For a provisional license for all instructional areas identified in paragraph (1) of this subdivision with the exception of English for speakers of other languages (ESOL), an applicant shall have successfully completed either three semester credit hours of study in approved course work in general teaching methods from an institution whose programs are registered or recognized by the department, or an approved 30-clock-hour course in general teaching methods from a proprietary school association recognized by the commissioner.

126.6(f)(4)(ii) For a provisional license for English for speakers of other languages (ESOL), an applicant shall have successfully completed either three semester credit hours of study in approved course work in general teaching methods from an institution whose programs are registered or recognized by the department, or an approved 30-clock-hour program in general teaching methods or methods of teaching English for speakers of other languages (ESOL) from a proprietary school association recognized by the commissioner.

126.6(f)(5) Full licenses. Applicants for a full license shall meet the appropriate requirements set forth in subparagraphs (i) and (ii) of this paragraph, including any required coursework. Applicants shall also complete the following:

126.6(f)(5)(i) For a full license for all instructional areas with the exception of English for speakers of other languages (ESOL), applicants shall have successfully completed either:

126.6(f)(5)(i)(a) an additional three semester credit hours of appropriate study in professional education from an institution whose programs are registered or recognized by the department; or

126.6(f)(5)(i)(b) an approved 60-clock-hour program(s) in professional education from a proprietary school professional association recognized by the commissioner.

126.6(f)(5)(ii) For a full license to teach English for speakers of other languages (ESOL), an applicant shall have successfully completed:

126.6(f)(5)(ii)(a) coursework in methods of teaching ESOL totaling 60 clock hours from a proprietary school association recognized by the commissioner or three semester credits from a program registered or recognized by the department; and

126.6(f)(5)(ii)(b) coursework in general teaching methods totaling 30 clock hours from a proprietary school association recognized by the commissioner or three semester credits from a program registered or recognized by the department.

126.6(g) Notwithstanding the provisions of subdivision (f) of this section, instructors and/or examiners in home study, internet or correspondence schools must have appropriate education and experience qualifications acceptable to the commissioner to meet the requirements for a license.

126.6(h) A \$100 nonrefundable application fee in the form of a check or money order payable to the State Education Department shall accompany all applications for teachers' permits and

licenses, directors' permits and licenses, renewals thereof, and amendments of temporary permits and licenses. Applications for licenses issued to teachers may be submitted by the applicants or the directors of the schools.

126.6(i) Upon a finding by the commissioner that an applicant possesses sufficiently unique and exceptional training and/or experience that are the substantial equivalent of the preparation and experience requirements of this section, a variance may be granted from any such requirements established in this section.

126.6(j) All teachers or directors licensed pursuant to this section who hold a permit or a provisional license shall submit an application for the next level of licensure at least 30 days prior to the expiration of the existing permit or license. All full license holders shall submit appropriate license renewal applications at least 90 days prior to the expiration of the existing license.

126.6(k) An applicant for licensure pursuant to the requirements of subdivision (f) of this section shall be exempt from the required general teaching methods course and the professional education courses, if the applicant meets one of the following criteria:

126.6(k)(1) possesses a degree in doctor of law (J.D.), doctor of medicine (M.D.), doctor of philosophy (Ph.D.) or doctor of education (Ed.D); or

126.6(k)(2) is identified by the commissioner as a special lecturer for a non-occupational course who is employed by the school as an expert in the field to provide instruction for a limited component of a course or curriculum.

126.6(l) Proprietary school professional associations approved by the commissioner to conduct teacher training courses as specified in this section may have such approval rescinded if the courses are not provided as approved including but not limited to the failure to conduct such courses the approved number of times.

126.6(m) Substitute teachers. Only a teacher licensed pursuant to this section may act as a substitute teacher in a school under the following conditions:

126.6(m)(1) Except as otherwise noted in paragraph (2) of this subdivision, a substitute teacher shall be licensed in the course, curriculum or instructional area for which he or she is providing instruction.

126.6(m)(2) A school may utilize the services of a substitute teacher who is licensed but not licensed for the appropriate course, curriculum or instructional area, if such substitute teacher meets the following requirements:

126.6(m)(2)(i) the school's director appoints an appropriately licensed teacher employed at the school to serve as a mentor for such substitute teacher, and such mentor meets with the substitute teacher at least one hour each week to review lesson plans, resolve problems, explain school policies and provide the necessary support for the substitute teacher; and

126.6(m)(2)(ii) such substitute teaching shall not exceed 10 percent of the total hours of the course or curriculum offering.

126.6(n) Vendor demonstrator. In cases where the curricula/courses offered require the assistance of a vendor demonstrator, the need for a demonstrator must be included and approved in the specific course or curriculum approval. Vendor demonstrators are not recognized as teachers, may not assume the routine function of teachers, and can only be used with a licensed teacher present.

SECTION 126.7. ENROLLMENT AGREEMENT AND STUDENT REFUND POLICIES

126.7(a) All conditions for enrollment in or completion of a curriculum or course shall be set forth in an enrollment agreement which shall be fully completed, dated and signed by both an authorized agent of the school and the student prior to the time instruction begins. The school shall retain a signed copy of the enrollment agreement and one signed copy shall be delivered to the student at the time of execution. The enrollment agreement may not be transferred or assigned to a third party. Acknowledgment of the receipt of a copy of the enrollment agreement by the student shall be made on the copy retained by the school.

126.7(b) The enrollment agreement shall be printed in no less than 10-point type, shall contain no advertising or extraneous material and shall set forth briefly and clearly the following:

126.7(b)(1) the name of the school;

126.7(b)(2) the title of the curriculum, course of courses as approved;

126.7(b)(3) the length of the curriculum, course or courses in instructional hours;

126.7(b)(4) the schedule of sessions or hours per week or the number of lessons for home study, internet or correspondence instruction;

126.7(b)(5) the name and date of birth of the student;

126.7(b)(6) the amount of the tuition fee and the amount of the application or registration fee set forth separately. Any portion of the application or registration fee that is nonrefundable shall be stated separately and shall be clearly identified as a nonrefundable application or registration fee;

126.7(b)(7) the amount of any and all other fees and charges required for completion of the course. Fees and charges, such as student fee for kit, textbooks, tools, equipment and supplies, make-up fees, laboratory fees and deposits, shall be itemized separately and shall not be included in tuition;

126.7(b)(8) the total cost of the course of instruction;

126.7(b)(9) provision for the method or methods of payment;

126.7(b)(10) the conditions of any approved cooperative practical experience outside the school premises;

126.7(b)(11) the following statement “while placement service may be provided, it is understood that the school cannot promise or guarantee employment to any student or graduate” or a similar statement acceptable to the commissioner;

126.7(b)(12) such reasonable rules, regulations and conditions as the school may desire to set forth in the agreement;

126.7(b)(13) the names and certificate numbers of the agents responsible for procuring, soliciting or enrolling the student or enrollee. The enrollment agreement shall contain an appropriate place in which the student shall by signature, confirm the names of such agents;

126.7(b)(14) a separately signed acknowledgment by the student that he or she has received the disclosure material, as required by section 5005 of the Education Law; and

126.7(b)(15) the refund a school will make in the event a student fails to enter, withdraws, or is discontinued from instruction consistent with the provisions set forth in subdivision 3 of section 5002 of the Education Law and subdivision (d) of this section; or for schools using the correspondence, internet or home study method of instruction, subdivision (c) of this section.

126.7(c) Enrollment agreements for curricula and courses offered by schools using the correspondence, internet or home study method of instruction shall meet the requirements of the Personal Property Law, section 412-a.

126.7(d) Enrollment agreements shall provide for a reasonable adjustment of tuition and other fees. Except as otherwise provided in subdivision (e) of this section and Education Law, section 5002(3), a refund policy not consistent with the following shall not be approved:

126.7(d)(1) Definitions. As used in this subdivision:

126.7(d)(1)(i) *Quarter* means up to 14 weeks of instruction.

126.7(d)(1)(ii) *Term or semester* means between 15, 16, 17 or 18 weeks of instruction.

126.7(d)(1)(iii) Except as otherwise provided in paragraph (2) of this subdivision, a *week of instruction* means between 2 and 30 clock hours of instruction within seven consecutive days. Upon approval of the commissioner, a school may exceed such hours provided that: the school has submitted an educational justification for exceeding 30 hours per week; and the program provides for one hour off for each student within each day of instruction.

126.7(d)(2) If in calculating the weeks of instruction pursuant to subparagraph (1)(iii) of this subdivision, the total number of calendar weeks is six or less, then a week of instruction shall be defined as follows:

126.7(d)(2)(i) *the first week of instruction* means 0 to 15 percent of the program's total clock hours;

126.7(d)(2)(ii) *the second week of instruction* means 16 to 30 percent of the program's total clock hours;

126.7(d)(2)(iii) *the third week of instruction* means 31 to 45 percent of the program's total clock hours;

126.7(d)(2)(iv) *the fourth week of instruction* means 46 to 60 percent of the program's total

clock hours;

126.7(d)(2)(v) *the fifth week of instruction* means 61 to 75 percent of the program's total clock hours;

126.7(d)(2)(vi) *the sixth week of instruction* means 76 to 90 percent of the program's total clock hours; and

126.7(d)(2)(vii) *the seventh week of instruction* means 91 to 100 percent of the program's total clock hours.

126.7(d)(3) A school shall divide all courses or curricula into quarters or terms. In establishing such quarters or terms, the school shall take into account the educational purposes of the program, and to the maximum extent possible, ensure that units of instruction or courses are coterminous with a quarter or term.

126.7(d)(4) The student refund policy for the first term or quarter of any program, as set forth in section 5002(3)(b) of the Education Law, shall be clearly stated in the enrollment agreement.

126.7(d)(5) For those programs with a second term or quarter, the student refund policy for such second term or quarter shall be the same as the first quarter or term unless the school demonstrates that there were no significant educational changes in the student's educational program at the time of a student's termination, in which case the student refund policy for the second term or quarter shall be the policy set forth in section 5002(3)(c)(1) of the Education Law.

126.7(d)(6) For those programs with a third or subsequent term or quarter, the tuition refund policy for such third or subsequent term or quarter shall be the policy set forth in section 5002(3)(c)(1) of the Education Law.

126.7(d)(7) Fees and charges as described in paragraph (b)(7) of this section, and paid to the school for goods or services which have not been provided by the school and accepted by the student, shall be refunded.

126.7(d)(8) Notwithstanding any other provision of this subdivision, an application or registration fee not to exceed 10 percent of the tuition cost of the program or \$100, whichever is less, may be retained by the school, in whole or in part, if the student signs the enrollment agreement, except for schools using the correspondence, internet or home study method of instruction which shall comply with subdivision (c) of this section.

126.7(d)(9) In the case of a school in which the instruction is given in residence, a student may cancel the agreement at no penalty, with the exception of the loss of that portion of the application or registration fee which is designated in the agreement as nonrefundable, by notifying the school in writing within seven days after midnight of the day on which the agreement was signed, provided the student has not yet entered into instruction. Before entering into instruction, a student may cancel the agreement after the seven-day period. In such a case, the student will be liable only for the nonrefundable application or registration fee

and any books or supplies that have been accepted.

126.7(e) Notwithstanding the provisions of subdivision (d) of this section, a school accredited by a nationally recognized accrediting agency may use the refund policy of such agency only to the extent that such policy offers the student less tuition liability than the provisions of section 5002(3) of the Education Law and is approved by the commissioner. A school required by Federal law to follow a predetermined student refund policy may do so only to the extent that such student refund policy offers the student less tuition liability than the provisions of section 5002(3) of the Education Law and is approved by the commissioner.

126.7(f) If a transcript, diploma, certificate, or other document evidencing satisfactory program or course completion is to be withheld until all fees and charges have been met, the enrollment agreement must so state, and such documents may then be withheld except as otherwise provided by law.

126.7(g) Any refunds due to students who cancel, withdraw or are discontinued shall be made within 45 days of such action pursuant to section 5002(3)(g) of the Education Law.

SECTION 126.8. FINANCIAL VIABILITY AND REPORTING

All schools shall meet and maintain the standards of financial viability and reporting set forth in this section as a requirement and condition of licensure or certification. For the purposes of this section, *school* shall mean *school* as it is defined in subdivision (p) of section 126.1 of this Title and shall additionally include Certified English as a second language schools as defined in subdivision (x) of section 126.1.

126.8(a) General standards of financial viability.

126.8(a)(1) The commissioner shall consider a school to be financially viable if the commissioner determines that:

126.8(a)(1)(i) the school's equity, primary reserve, and net income ratios yield a composite score of at least 1.5, using the methodology set forth in federal regulation 34 CFR section 668.172. The composite score shall be calculated at the highest level of ownership; and

126.8(a)(1)(ii) the school is able to meet all of its financial obligations and provide the administrative resources necessary to comply with all licensure or certification requirements. A school is deemed unable to meet its financial or administrative obligations pursuant to this paragraph if:

126.8(a)(1)(ii)(a) the school does not have sufficient operating cash flow and liquidity, as determined by the commissioner; or

126.8(a)(1)(ii)(b) the school is subject to any of the triggering events set forth in subdivision (b) of this section and the commissioner determines such triggering event is likely to have a material adverse effect on the financial condition of the school or indicates a distressed financial condition.

126.8(a)(2) No school shall be considered financially viable pursuant to this subdivision where a school owner:

126.8(a)(2)(i) owes an outstanding liability to the department for the school or any other licensed or certified school, previously licensed or certified school, or unlicensed school for which the owner has or previously had an ownership interest and fails to demonstrate that such liability is being paid in accordance with law, regulation, order, settlement, or other written agreement with the department; or

126.8(a)(2)(ii) owes a liability to the department for any violation of Article 101 of the Education Law or this Part and fails to demonstrate that such liability is being paid in accordance with law, regulation, order, settlement, or other written agreement with the department.

126.8(b) Triggering events.

126.8(b)(1) The commissioner may determine that a school is not able to meet its financial or administrative obligations upon occurrence of any of the following triggering events and a subsequent determination by the commissioner that such event is likely to have a material adverse effect on the financial condition of the school or indicate a distressed financial condition:

126.8(b)(1)(i) the school's financial statement, regardless of the school's composite score, contains any adverse, qualified, or disclaimed opinions, or any disclosure in the notes to the financial statement that there is substantial doubt about the school's ability to continue as a going concern in accordance with United States generally accepted accounting principles;

126.8(b)(1)(ii) failure to timely and completely pay any assessments that may be due pursuant to sections 5001(9), 5007(10)(d), and 5007(10)(e) of the Education Law, and section 126.10(j)(11) of this Part;

126.8(b)(1)(iii) failure to timely and completely submit any financial statements that may be due pursuant to section 5001(4) of the Education Law and section 126.10(j)(11) of this Part;

126.8(b)(1)(iv) failure to timely pay a student refund where a school is required to pay such refund pursuant to Article 101 of the Education Law and this Part, or under any other law, regulation, or accreditation standard, or any failure to timely pay such refund;

126.8(b)(1)(v) the school has an unacceptable level of annual student dropout/withdrawal rates, as determined by the commissioner;

126.8(b)(1)(vi) the school demonstrates a precipitous decline in student enrollment or gross tuition income, as determined by the commissioner;

126.8(b)(1)(vii) violation of a provision or requirement in a security or loan agreement with a creditor;

126.8(b)(1)(viii) failure to make a timely lease, rent or other debt service payment; or any notice of eviction, order to vacate, or any other event or action that may impact a school's ability to operate at its licensed location;

126.8(b)(1)(ix) issuance of a notice or order by a school's accrediting agency, such as an order to show cause or similar action, that, if not satisfied, could result in the withdrawal, revocation or suspension of institutional accreditation for failing to meet one or more of the agency's standards;

126.8(b)(1)(x) if the school is publicly traded, any material adverse action taken against the school by the United States Securities and Exchange Commission, including but not limited to revocation of registration, delisting, or sanction for untimely or incomplete filing of required reports;

126.8(b)(1)(xi) any notice, order, or action taken by the United States government or an agent or instrumentality thereof that could result in the withdrawal, revocation, or suspension of a school's federal Student Exchange Visitor Program certification; or

126.8(b)(1)(xii) any substantial withdrawal of owner equity from the school by any means that results in, or that the commissioner determines will likely result in, the school's composite score falling below 1.0.

126.8(b)(2) Schools must notify the department in writing, within five days of the occurrence of any action or event identified in subparagraphs (vii) through (xii) of paragraph (1) of this subdivision. Upon receiving such notice, the commissioner may require the school to provide additional information and reports, and may require the school to notify students and provide students with information and guidance regarding the potential implications of the action or event on student enrollment status, continued instruction, tuition funds and refunds, as well as all transfer options.

126.8(c) Alternative standards of financial viability. The commissioner may permit a school that is not financially viable under the general standards set forth in subdivision (a) of this section, to be licensed or certified or continue its licensed or certified operation by meeting one of the alternate standards set forth in this subdivision.

126.8(c)(1) Zone alternative. A school that does not meet the general standards of financial viability solely because the commissioner determines that the composite score for its most recent fiscal year falls below 1.5 may nevertheless be found financially viable if: (1) the commissioner approves a plan, submitted by the school, which adequately details the actions the school is taking to improve its financial viability and to mitigate any risk to the interruption or cessation of instruction and to student tuition funds; and (2) maintains a composite score of between 1.0 and 1.4 or higher for each of its two subsequent fiscal years.

126.8(c)(1)(i) The commissioner shall notify any such school in writing that it is eligible for the zone alternative.

126.8(c)(1)(ii) The plan shall be received no later than sixty days from the date of the commissioner's notice to the school of its eligibility for the zone alternative.

126.8(c)(1)(iii) A school may qualify for this alternative for no more than three consecutive years.

126.8(c)(2) Probation. A school that does not meet the general standards of financial viability and does not qualify for the zone alternative may be placed on probation, in the discretion of the commissioner, for a period of no more than one year. Such probation may include additional monitoring, inspections, limitations on enrollment, teaching out some or all of a school's present students, or temporary cessation of instruction.

126.8(c)(2)(i) A school placed on probation shall submit reports on its financial

condition as directed by the commissioner. Such report shall be on a form and shall include content prescribed by the commissioner and shall be reviewed by the commissioner to determine the school's financial viability. The commissioner may require that this report be completed by an independent auditor.

126.8(c)(2)(ii) During the probationary period, the school and the department shall make efforts to resolve the problems at the school, through the school's demonstration of alternative methods of financial viability acceptable to the commissioner. Alternative methods of demonstrating financial viability may include:

126.8(c)(2)(ii)(a) the school securing a performance bond payable to the department, in a form and manner determined by the commissioner, and in an amount appropriate to eliminate any liability to the tuition reimbursement account should the school cease operation;

126.8(c)(2)(ii)(b) the school limiting its collection of tuition funds until each student completes their program of study;

126.8(c)(2)(ii)(c) establishing a trust account for the sole and exclusive benefit of students, pursuant to section 5008 of the Education Law; or,

126.8(c)(2)(ii)(d) any other means acceptable to the commissioner.

126.8(c)(2)(iii) By the conclusion of the probationary period, the school must satisfactorily demonstrate to the commissioner that it is financially viable by meeting one or more alternative methods of demonstrating financial viability set forth in this subdivision, or the general standards set forth in subdivision (a) of this section. If the school cannot demonstrate to the commissioner that it is financially viable by one or more methods set forth in this subparagraph, and if the commissioner determines that the school's financial condition continues to threaten its ability to educate students and/or jeopardize student tuition funds, the commissioner shall schedule a hearing pursuant to subdivisions (2) and (3) of section 5003 of the Education law, to consider suspension or revocation the school's license.

126.8(c)(3) The commissioner may require applicants for initial licensure or certification that are newly formed and that have not completed any fiscal years from which to determine a composite score to establish a performance bond, trust account, or other means acceptable to the commissioner as an alternative to the requirement set forth in paragraph (a)(1) of this section, provided that the applicant meets the standards set forth in paragraphs (a)(2) and (a)(3) of this section.

126.8(d) Administrative actions. The commissioner may deny, suspend, revoke or decline to renew any license or certification if the commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds pursuant to section 5001(5)(c)(3) of the Education Law.

126.8(e) Financial Reporting.

126.8(e)(1) Applicants for initial licensure or certification shall provide the following financial reports, as applicable, to the commissioner:

126.8(e)(1)(i) a balance sheet of the corporate entity or partnership with a certification of accuracy signed by the individual shareholders of the corporation or partners, and dated not more than 30 days prior to the date of the license application;

126.8(e)(1)(ii) a certificate of incorporation for a corporate entity, or a partnership agreement for a partnership;

126.8(e)(1)(iii) a statement indicating the location and type of all bank accounts held by the corporate owners or partners in their official capacities;

126.8(e)(1)(iv) audited financial statements for the previous two fiscal years.

126.8(e)(1)(v) a projected operating budget, including all projected expenses, revenues, profits and losses, by month, for two consecutive 12-month periods (the first two projected years) for initial licensure; and

126.8(e)(1)(vi) such other information as the commissioner may require regarding the adequacy of the applicant's resources beyond all indebtedness available for educational purposes and to ensure the capability of the prospective school to meet its financial obligations.

126.8(e)(2) Applicants for renewal of licensure or certification shall submit audited financial statements in accordance with section 5001(4)(a) of the Education Law. The annual financial statements submitted pursuant to paragraph (3) of this subdivision shall satisfy this submission requirement, provided that for schools described in subparagraph (ii) of paragraph (3) of this subdivision, the annual financial statement submitted immediately prior to the due date of the renewal application is an audited financial statement.

126.8(e)(3) All schools shall submit annual financial statements in accordance with the following provisions:

126.8(e)(3)(i) Any school that received five hundred thousand dollars or more in gross tuition in a school fiscal year shall be required to submit to the commissioner an annual audited financial statement prepared in accordance with generally accepted accounting principles for that fiscal year. In addition, any school that has a gross tuition of less than five hundred thousand dollars in a school fiscal year but whose combined state and federal student financial aid in such year equals one hundred thousand dollars or more shall also submit an annual audited financial statement to the commissioner for that fiscal year.

126.8(e)(3)(ii) Schools whose gross tuition is less than five hundred thousand dollars in a school fiscal year and which receive less than one hundred thousand dollars in state

and federal student financial aid in a school fiscal year shall file with the commissioner an unaudited financial statement in a format prescribed by the commissioner, provided, however, that any such school shall file an audited financial statement the fiscal year after a reviewed financial statement is submitted. For such schools, audited financial statements are required every two years, at minimum, with reviewed financial statements allowed during the alternate year. Upon a determination by the commissioner that a school has submitted false or inaccurate statements or that a significant, unsubstantiated decline in gross tuition has occurred, the commissioner may require any such school to file an audited financial statement pursuant to this paragraph even during alternate years when reviewed statements would ordinarily be allowed.

126.8(e)(3)(iii) annual financial statements shall be due no later than 120 days from the end of the school's fiscal year. The commissioner may extend this deadline for up to 60 days for good cause shown, as determined by the commissioner.

126.8(e)(3)(iv) annual financial statements shall include the following data, disaggregated by each licensed location:

126.8(e)(3)(iv)(a) the gross tuition income for all approved occupational curricula and non-occupational courses; and

126.8(e)(3)(iv)(b) an itemized account of tuition refunds due and owing to past or presently enrolled students, separated out for each licensed or certified location.

SECTION 126.9. CATALOGS

126.9(a) Each licensed private career school shall publish a catalog or bulletin, which shall be furnished to each prospective or enrolled student, which shall include the following:

126.9(a)(1) identifying data, such as volume number and date of publication;

126.9(a)(2) names of the school and its governing body, officials and faculty, and other instructional personnel and their qualifications;

126.9(a)(3) a calendar of the school showing legal holidays, beginning and ending dates of each quarter, term, or semester, and other important dates;

126.9(a)(4) school policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

126.9(a)(5) school policy and regulations relative to leaves of absence, class cuts, makeup work, tardiness and interruptions for unsatisfactory attendance;

126.9(a)(6) school policy and regulations relative to standards of progress required of the student by the school. Such policy shall define the grading system of the school, the marking periods used at the school, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress; and shall describe the probationary period, if any, allowed by the school, conditions for reentrance for those students dismissed for unsatisfactory progress, and the student progress records kept by the school and furnished to the student. Such standards of progress shall conform with the requirement set forth in section 126.4 of this Part;

126.9(a)(7) school policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

126.9(a)(8) a detailed schedule of fees or charges for registration, tuition, books, supplies, tools, student activities, laboratory use, rentals, deposits, uniforms, equipment, taxes and all other charges associated with the program;

126.9(a)(9) school policy and regulations relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course, or withdraws or is discontinued. Catalogs shall contain the following statement “the failure of a student to immediately notify the school director in writing of the student's intent to withdraw may delay a refund of tuition to the student pursuant to section 5002(3) of the Education Law”;

126.9(a)(10) a description of the available space, facilities and equipment including any special facilities and services available to students with disabilities or handicapping conditions;

126.9(a)(11) a description of each course or curriculum including program objectives, the length of the total program and, if applicable, the length and description of the individual courses within the curriculum;

126.9(a)(12) school policy and regulations relative to granting credit for previous educational training;

126.9(a)(13) financial assistance information to be disseminated to enrolled and prospective students, including:

126.9(a)(13)(i) a description of all State, Federal and school financial aid programs including scholarship or grant programs offered by the school. Such description shall also include the procedures for the preparation of forms to apply for such aid, student eligibility requirements, and criteria for selecting recipients and determining the amount of a student's award. Standard current descriptions of State and Federal financial assistance programs will be provided by the Education Department in cooperation with the Higher Education Services Corporation to the schools subject to the provisions of this Part. Such descriptions, or other equivalent descriptions providing the required information, along with current procedures and definitions related to emancipated student status, shall be provided by the schools to enrolled and prospective students. Where summary information is provided, a school office where detailed information can be obtained shall be identified;

126.9(a)(13)(ii) a statement of the rights and responsibilities of students receiving financial aid under the programs listed above. This information shall include:

126.9(a)(13)(ii)(a) criteria for continued eligibility for each program, including the financial conditions which must be met;

126.9(a)(13)(ii)(b) criteria for determining that a student is in good standing and maintaining satisfactory progress in his course of study, and the criteria by which a student who has failed to maintain satisfactory progress or good standing may reestablish his or her eligibility for aid;

126.9(a)(13)(ii)(c) the means by which payment of awards will be made to students, and the frequency of such payment;

126.9(a)(13)(ii)(d) the terms, and expected schedules, of repayment of any loan received by a student as a part of the student's financial aid; and

126.9(a)(13)(ii)(e) the general conditions and terms of any employment provided to a student as part of the student's financial aid;

126.9(a)(13)(iii) the designated employee or group of employees, by title, who are available to assist students in obtaining the information specified above; and

126.9(a)(14) data regarding student completion and job placement as set forth in subdivision (f) of section 126.10 of this Part for the two most recent reporting periods. Such reporting periods shall be defined by the commissioner;

126.9(a)(15) the pass rate of the school's graduates for any license or certificate examination

required by the State for employment in a specific vocational, trade or career field for which the school provides training programs. Such information shall be for a reporting period defined by the commissioner;

126.9(a)(16) the names of associations, agencies or governmental bodies which accredit, approve or license the school;

126.9(a)(17) a description of the complaint procedures pursuant to section 5003 of the Education Law;

126.9(a)(18) a description of the process for obtaining a tuition refund from the tuition reimbursement fund pursuant to section 5007 of the Education Law;

126.9(a)(19) a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of withdrawal; and

126.9(a)(20) such other information as the commissioner may require.

126.9(b) Each school catalog or bulletin shall be approved by the commissioner prior to its use, except as provided in section 5002(5)(f) of the Education Law.

SECTION 126.10. SCHOOL LICENSE; LICENSING PROCEDURE

126.10(a) Every applicant shall submit an application for licensure of a private career school upon forms provided by the commissioner, together with such other information as the commissioner may require, including applications for approval of curricula or courses of study, quarters or facilities, required personnel licenses, and documentation of ownership and adequacy of resources. The application shall be accompanied by the statutory fee. In accordance with section 5001(4) of the Education Law, the applicant shall receive a written approval or denial, together with the reasons for a denial of such application.

126.10(b) An application for renewal of any license shall be submitted at least 120 days prior to the expiration date of the current authorization, on a form prescribed by the commissioner and accompanied by the statutory fee; annual financial reports on forms prescribed by the commissioner; and such other information as the commissioner may require. When complete and timely application for renewal of any license has been made, the school shall receive a written approval or denial, together with the reasons for denial of renewal, from the commissioner no less than 30 days prior to the date such license expires. Upon receiving a written denial, a school shall not enroll new students for the remainder of the term of the existing license.

126.10(c) Pursuant to section 5001(7) of the Education Law, no license granted under this Part shall be transferable or assignable without the approval of the commissioner. Upon transfer or assignment of any interest totaling 25 percent or more, whether direct or indirect, in the total equity or assets of a school shall be deemed a new school required to submit a new school application and obtain a new license pursuant to the requirements of this Part. However, upon such a substantial change in interest, the previous school license shall remain in effect until the new license is issued or denied or the previous license expires or is revoked, whichever comes first.

126.10(d) Each school shall display, near the entrance to the school, the license which has been issued to it. Such authorization shall be displayed only during the period of its validity.

126.10(e) A school shall be subject to an annual assessment based on the school's gross tuition from the previous year, in accordance with the requirements of sections 5001(9) and 5007(10) of the Education Law. For a school in operation in the year prior to the issuance of its license, such assessment shall begin in its initial year of licensure, based on the school's gross tuition from such previous year, in accordance with the requirements of sections 5001(9) and 5007(10) of the Education Law.

126.10(f) Each school shall submit annual statistical reports on forms prescribed by the commissioner. Such statistical reports shall be certified by the owner that they are true and accurate, in a manner established by the commissioner. The commissioner may require audited statistical reports upon a determination that a school has provided false or inaccurate statistical reports. Statistical reports shall be submitted annually for a reporting period established by the commissioner and shall include the following information:

126.10(f)(1) number of applicants, by program of instruction, who were accepted for enrollment during the reporting period;

126.10(f)(2) number of applicants, by program of instruction, who applied for, but were denied, enrollment because they failed to satisfy the entrance requirements;

126.10(f)(3) number of full-time and part-time students, by program of instruction, enrolled at the beginning of the reporting period;

126.10(f)(4) number of full-time and part-time students, by program of instruction, who enrolled during the reporting period;

126.10(f)(5) number of full-time and part-time students, by program of instruction, who were still enrolled at the end of the reporting period;

126.10(f)(6) number of full-time and part-time students, by program of instruction, who graduated during the reporting period;

126.10(f)(7) number of full-time and part-time students, by program of instruction, who withdrew without completing the program of instruction during the reporting period;

126.10(f)(8) number of full-time and part-time students, by program of instruction, who received financial assistance from Federal and/or State programs during the reporting period; and

126.10(f)(9) the employment or educational status, by program, of students graduating during the reporting period.

126.10(g) Schools conducted for profit which provide instruction in English as a second language or preparation for the high school equivalency examinations to out-of-school youth or adults which are required to be licensed under section 5001 of the Education Law, pursuant to chapter 887 of the Laws of 1990, shall comply with the provisions of this Part, article 101 of the Education Law and all other applicable laws and regulations, in a time frame established by the commissioner. Such schools in operation prior to September 1, 1990 may be granted a variance from any provision of this Part relating to an initial or renewal application for licensure, if in the judgment of the commissioner, the educational quality of the program or financial viability of the school will not be impaired.

126.10(h) Alternate licensing procedures for correspondence, internet or home study schools. Pursuant to section 5001(4)(f) of the Education Law, correspondence, internet or home study schools in which all approved programs and courses are under 300 hours shall be subject to all of the requirements of article 101 of Education Law and this Part, except that they shall be exempt from the following provisions:

126.10(h)(1) paragraphs (8) and (9) of subdivision (f) of this section relating to the reporting of financial assistance and placement information;

126.10(h)(2) section 5002(1)(c)(1) of the Education Law relating to the passing of an entrance examination, provided that the commissioner determines that such action will not impair a

student's ability to successfully complete the program;

126.10(h)(3) section 5002(1)(c)(2) of the Education Law relating to the required counseling plan for schools admitting students who do not possess a high school diploma or its equivalent, provided that the commissioner determines that such action will not impair a student's ability to successfully complete the program;

126.10(h)(4) section 126.4(a) of this Part relating to student-to-teacher ratio;

126.10(h)(5) section 126.4(e) of this Part relating to attendance requirements;

126.10(h)(6) section 126.5 of this Part relating to equipment and housing;

126.10(h)(7) section 126.7 relating to enrollment agreements with the exception of section 126.7(c) relating to refund policies for correspondence schools;

126.10(h)(8) section 126.9(a)(13) of this Part relating to financial information in a school's catalog;

126.10(h)(9) placement data as required in section 126.9(a)(14) of this Part for a school's catalog;

126.10(h)(10) section 126.9(a)(10) of this Part relating to facilities and equipment information in a school's catalog;

126.10(h)(11) section 5005(a)(7) of the Education Law relating to a description of facilities and equipment in the student disclosure material; and

126.10(h)(12) section 5005(c) of the Education Law relating to a description of financial information in the student's disclosure material.

126.10(i) Alternate licensing procedures for schools exempt from licensure pursuant to subdivision (2) of section 5001 of the Education Law which elect to be licensed.

126.10(i)(1) Exempt schools operated, licensed, regulated, approved by or contracting with a governmental agency or authority, which elect to be licensed.

126.10(i)(1)(i) Exempt schools operated, licensed, regulated, approved by or contracting with a governmental agency or authority, which elect to be licensed, shall meet all of the requirements of article 101 of the Education Law and this Part, except that such schools may meet the requirement for a certificate of occupancy by meeting the requirement in paragraph (3) of this subdivision and except that such school shall be subject to an alternate requirement established by the governmental agency or authority, provided that the commissioner determines that such requirement is equivalent to a requirement established in one or more of the following provisions:

126.10(i)(1)(i)(a) subdivisions (4) and (5) of section 5002 of the Education Law and

section 126.4(a)-(d) and (f)-(g) of this Part relating to curriculum approval and reapproval;

126.10(i)(1)(i)(b) subdivision (6) of section 5002 of the Education Law and section 126.6 of this Part relating to teacher and director licensing;

126.10(i)(1)(i)(c) section 5004 of the Education Law and section 126.12 of this Part relating to school agents, for only those schools which enroll students solely on the basis of a contract with an organization or business, which do not solicit enrollment through communication aimed at the prospective student, and where there is no tuition liability to the student;

126.10(i)(1)(i)(d) section 126.4(e)(2) of this Part relating to academic standards of progress; and

126.10(i)(1)(i)(e) section 126.11 of this Part relating to school and student records.

126.10(i)(1)(ii) The commissioner shall consult with the governmental agency or authority which operates, licenses, regulates, approves or contracts with such a school before implementing the provisions of section 5003(6) of the Education Law relating to civil penalties and administrative action against such school.

126.10(i)(2) Other exempt schools which elect to be licensed. All exempt schools which elect to be licensed, with the exception of those specified in paragraph (1) of this subdivision, shall meet all of the requirements of article 101 of the Education Law and this Part, except that such schools may meet the requirement for a certificate of occupancy by meeting the requirement in paragraph (3) of this subdivision.

126.10(i)(3) For any exempt school which elects to be licensed pursuant to article 101 of the Education Law and this Part and is in existence prior to such licensure, a certificate of occupancy which was in effect at the time of application for licensure shall be acceptable to the commissioner, provided that the governmental authority issuing such certificate of occupancy has determined that the certificate of occupancy is valid as of that date.

126.10(j) Alternate licensing requirements for nonpublicly funded ESL schools.

126.10(j)(1) General provisions.

126.10(j)(1)(i) Nonpublicly funded ESL schools shall be exempt from the requirements of this Part and Article 101 of the Education Law, except as provided in this subdivision and sections 126.1, 126.8, 126.18, 126.19 and subdivision (c) of section 126.11 of this Part, and paragraphs (b) and (c) of subdivision (1) of section 5001 of the Education Law, and subdivision (3) of section 5004 of the Education Law.

126.10(j)(1)(ii) Schools that meet the requirements of this subdivision shall receive initial certification for a two-year period and renewal certification for a four-year period and shall be listed in the *New York State English as a Second Language School Registry*.

126.10(j)(1)(iii) Schools shall be subject to unscheduled visits by the commissioner or the commissioner's designee to ensure the school's compliance with the requirements of this subdivision.

126.10(j)(1)(iv) Upon request by the department, schools shall provide any and all records necessary to review compliance with the requirements of this subdivision.

126.10(j)(1)(v) The payment of all fees and assessments required by this subdivision shall be considered a condition of certification.

126.10(j)(1)(vi) The definitions in section 126.1 of this Part shall be applicable to such schools.

126.10(j)(2) Application procedures.

126.10(j)(2)(i) Initial certification.

126.10(j)(2)(i)(a) Every applicant and renewal applicant shall apply for certification on an application form prescribed by the commissioner and shall submit with such application a nonrefundable and nontransferable \$5,000 certificate fee of which \$3,000 shall accrue to the credit of the proprietary vocational school supervision account and \$2,000 shall accrue to the tuition reimbursement account. For additional locations of currently certified operating schools, the application fee shall be \$2,500 which shall accrue to the credit of the proprietary vocational school supervision account.

126.10(j)(2)(i)(b) Schools shall submit the following information with a completed application for initial certification:

126.10(j)(2)(i)(b)(1) sample enrollment agreements, which meet the requirements in paragraph (6) of this subdivision, used for each English as a second language curriculum offered by the school;

126.10(j)(2)(i)(b)(2) a complete description of the content of all English as a second language curricula offered by the school in a form prescribed by the commissioner;

126.10(j)(2)(i)(b)(3) a description of refund policies which pertain to English as a second language curricula in the event a student fails to enter, withdraws or is discontinued from instruction;

126.10(j)(2)(i)(b)(4) educational and administrative policies and procedures that are provided students in English as a second language curricula upon enrollment;

126.10(j)(2)(i)(b)(5) disclosures required to be made to students, pursuant

to paragraph (5) of this subdivision;

126.10(j)(2)(i)(b)(6) evidence, satisfactory to the commissioner, that the school meets the requirements relating to personnel in paragraph (3) of this subdivision;

126.10(j)(2)(i)(b)(7) evidence, satisfactory to the commissioner, that the school meets the requirements relating to facilities and equipment in paragraph (4) of this subdivision; and

126.10(j)(2)(i)(b)(8) financial documentation as required by paragraph (1) of subdivision (e) of section 126.8 of this Part.

126.10(j)(2)(ii) Renewal of certification.

126.10(j)(2)(ii)(a) Schools shall apply for renewal of certification at least 120 days prior to the expiration of the current certificate on an application form prescribed by the commissioner and shall submit with such an application a nonrefundable and nontransferable fee in accordance with the provisions of section 5001(4)(b) of the Education Law.

126.10(j)(2)(ii)(b) Schools shall submit financial documentation as required by paragraph (2) of subdivision (e) of section 126.8 of this Part with their renewal applications.

126.10(j)(2)(iii) A school shall submit to the commissioner any changes in the information, policy or programs which it has submitted in support of an application for initial certification or an application for renewal of certification 14 days prior to the date on which such changes take effect.

126.10(j)(3) Personnel.

126.10(j)(3)(i) Director.

126.10(j)(3)(i)(a) Each school shall employ a director who shall meet the requirements in section 126.6(d)(1)(i), (2) and (3) of this Part and this subparagraph.

126.10(j)(3)(i)(b) Directors' permits or licenses, issued on or after May 25, 2000, shall be renewable and valid only for the school for which they are issued. No individual may be employed as a director at more than one school without the approval of the commissioner. An ESL school director's license, issued on or after May 25, 2000, shall be valid for the same period for which the school is licensed or registered.

126.10(j)(3)(i)(c) Individuals shall apply for a director's license, or renewal thereof, on an application form prescribed by the commissioner. Such

application form shall be submitted to the commissioner with a nonrefundable and nontransferable application fee of \$100. A school director's license renewal application shall be submitted with the renewal application of the employing school.

126.10(j)(3)(i)(d) Any permanent director's license, issued prior to May 25, 2000, shall continue to be deemed approved without renewal until such time as the director leaves the school and location for which the license is valid.

126.10(j)(3)(ii) Private school agent.

126.10(j)(3)(ii)(a) Each school shall employ at least one private school agent who meets the requirements in this subparagraph.

126.10(j)(3)(ii)(b) Each agent shall produce his or her agent certificate upon the request of the commissioner, the commissioner's designee, or any prospective student.

126.10(j)(3)(ii)(c) A school shall submit an application for licensure for an agent on or before the first day of employment of such individual, in accordance with the requirements of section 126.12(a) of this Part.

126.10(j)(3)(ii)(d) A school or its private school agent, as applicable, shall meet the requirements in section 126.12(b)-(e) of this Part.

126.10(j)(3)(ii)(e) A private school agent meeting the requirements of this paragraph shall take responsibility for enrolling each student enrolled in an English as a second language curriculum.

126.10(j)(3)(iii) Teachers.

126.10(j)(3)(iii)(a) Teachers providing instruction in English as a second language programs at a nonpublicly funded ESL school shall have been awarded a baccalaureate or equivalent degree from an institution licensed or recognized by the department; and have successfully completed either an English as a second language training program recognized by the department or one year of teaching experience in an English as a second language program.

126.10(j)(3)(iii)(b) Upon a finding by the commissioner that the applicant possesses sufficiently unique and exceptional training and/or experience that are substantially the equivalent of the requirements set forth in clause (a) of this subparagraph, a variance may be granted from such requirements.

126.10(j)(4) Facilities and equipment. The buildings, rooms or space in which staff and students are housed for any purpose while attending school, and all facilities and equipment therein, shall meet the applicable standards of local fire, health and building authorities.

126.10(j)(5) Disclosure to students. For all students enrolled in English as a second language curricula, schools shall provide the following information to students in a format prescribed by the commissioner prior to the execution of the enrollment agreement with them:

126.10(j)(5)(i) a description of the status of the school as a nonpublicly funded English as a second language school certified by the New York State Education Department as meeting alternative licensing requirements and not subject to all of the licensing standards and requirements in article 101 of the Education Law and this Part which are applicable to licensed private career schools;

126.10(j)(5)(ii) a description of the complaint procedures established pursuant to Education Law, section 5003(1)(c); and

126.10(j)(5)(iii) a description of the process for obtaining a refund from the tuition reimbursement fund.

126.10(j)(6) Enrollment agreement.

126.10(j)(6)(i) An enrollment agreement shall be completed for all students enrolled in English as a second language curricula. Such an enrollment agreement shall meet the requirements in section 126.7(a) of this Part.

126.10(j)(6)(ii) The enrollment agreement shall be printed in no less than 10-point type, shall contain no advertising or extraneous material and shall set forth briefly and clearly the following:

126.10(j)(6)(ii)(a) the name of the school;

126.10(j)(6)(ii)(b) the title of the curriculum, course or courses for which the student is contracting;

126.10(j)(6)(ii)(c) the length of the curriculum, course or courses in instructional hours;

126.10(j)(6)(ii)(d) the name and address of the student;

126.10(j)(6)(ii)(e) the full contract price for instruction, including all fees, tuition, and costs of textbooks, materials, and equipment;

126.10(j)(6)(ii)(f) the method of payment;

126.10(j)(6)(ii)(g) such reasonable rules, regulations and conditions as the school may desire to set forth in the agreement;

126.10(j)(6)(ii)(h) a separately signed acknowledgment by the student that he or she has received disclosure material, as required by paragraph (5) of this subdivision;

126.10(j)(6)(ii)(i) the refund the school will make in the event a student fails to enter, withdraws or is discontinued from instruction which is consistent with the refund policy submitted to the department, pursuant to the requirement in subclause (2)(i)(b)(3) of this subdivision; and

126.10(j)(6)(ii)(j) the name and certificate number of the school agent responsible for enrolling the student.

126.10(j)(7) Advertising. A school shall meet the requirements of section 126.3 of this Part and shall be subject to section 5002(7) of the Education Law.

126.10(j)(8) Records. Records and files of a school pertaining to English as a second language curricula shall be maintained for three years at the location of the school or other principal place of business in New York State, unless specific disposition is authorized by the commissioner, and shall include:

126.10(j)(8)(i) copies of all advertising, bulletins and other promotional materials;

126.10(j)(8)(ii) the attendance register for each class, laboratory or session;

126.10(j)(8)(iii) records of instructional staff showing qualifications and teaching schedules;

126.10(j)(8)(iv) a completed copy of the student enrollment agreement contract signed by both an authorized agent of the school and the student prior to the time instruction begins;

126.10(j)(8)(v) records of all tuition and fees owed and paid by the student; and

126.10(j)(8)(vi) date of student completion or discontinuance.

126.10(j)(9) Teachout plans. A school may submit a teachout plan for English as a second language curricula to the commissioner for approval, subject to the requirements of section 5006 of the Education Law and section 126.16 of this Part.

126.10(j)(10) Disciplinary actions and penalties. Section 5003 of the Education Law shall be applicable to nonpublicly funded ESL schools, except that subparagraph (2) of paragraph (b) of subdivision (1) of such section shall not be applicable and in lieu of that requirement good cause shall include violation of any provision of this subdivision, including requirements of this Part and article 101 of the Education Law made applicable by this subdivision. Section 126.14 of this Part shall be applicable.

126.10(j)(11) Supervision account and tuition reimbursement account assessments.

126.10(j)(11)(i) The commissioner shall annually assess each school an assessment equal to five-tenths of one percent of its gross tuition, as determined by annual financial statements submitted in accordance with paragraph (3) of subdivision (e) of section 126.8

of this Part, of which three-tenths of one percent shall accrue to the benefit of the proprietary vocational school supervision account.

126.10(j)(11)(ii) The commissioner shall also assess each school additional assessments as applicable under subdivision (10) of section 5007 of the Education Law.

126.10(j)(11)(iii) For ESL schools in operation in the year prior to the issuance of their certification, such annual assessments prescribed in this paragraph shall begin in their initial year of certification, based on the schools' gross tuition from such previous year. For new ESL schools, the commissioner shall base the assessments prescribed in this paragraph on the annualized gross tuition of the school computed by the department from financial reports from the school as required by the department, and the assessments shall be prorated based upon the number of quarters that the school has operated in the assessment year.

126.10(j)(11)(iv) The assessments prescribed in subparagraphs (i) and (ii) of this paragraph shall be based upon each school's gross tuition from the previous year, and shall be payable in equal installments which shall be due on June 1st, September 1st, December 1st and March 1st.

126.10(j)(12) Tuition reimbursement account.

126.10(j)(12)(i) For all English as a second language curricula, schools shall comply with subdivisions (1) through (8) of section 5007 of the Education Law, except that paragraph (a) of subdivision (3) and paragraph (b) of subdivision (4) of such section shall not be applicable. Subparagraph (3) of paragraph (b) of subdivision (3) of such section shall not be applicable and in lieu of that requirement claimants shall be required to show that the school has failed to make the refund within the time period required by school policy.

126.10(j)(12)(ii) A student enrolled in an English as a second language curriculum in a school which has not closed or ceased operation, and who has not dropped out, is entitled to a full refund, provided that:

126.10(j)(12)(ii)(a) the student has submitted a complaint form to the commissioner; and

126.10(j)(12)(ii)(b) the commissioner has determined that the school has committed one or more of the following violations:

126.10(j)(12)(ii)(b)(1) operating a school with a registry certificate which has been suspended, revoked or not renewed;

126.10(j)(12)(ii)(b)(2) using false, misleading, deceptive or fraudulent advertising;

126.10(j)(12)(ii)(b)(3) having no licensed private agent responsible for enrolling the student;

126.10(j)(12)(ii)(b)(4) using fraudulent or improper claims by a licensed agent or school representative to enroll the student;

126.10(j)(12)(ii)(b)(5) misrepresenting the school or failing to comply with the requirements of paragraph (2) of this subdivision;

126.10(j)(12)(ii)(b)(6) dismissing or terminating a student for other than just cause; or

126.10(j)(12)(ii)(b)(7) committing any additional violation for which the commissioner demonstrates that the student would not have enrolled in the curriculum but for the commission of that violation.

126.10(k) Alternate licensing requirements for non-profit licensed careers schools that are exempt from taxation and whose programs are funded exclusively through donations.

Pursuant to Education Law section 5001(4)(f)(3), non-profit licensed career schools that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code and whose programs, including registration fees, the sale of books, supplies, services, kits, uniforms or equipment are funded entirely through donations, exclusive of public sources, from individuals or philanthropic organizations, or endowments, and interest accrued thereon, shall be subject to all of the requirements of article 101 of Education Law and this Part, except that:

126.10(k)(1) such schools shall be exempt from the following requirements of Education Law:

126.10(k)(1)(i) Education § 5002(3), relating to tuition liability;

126.10(k)(1)(ii) Education Law § 5001(4)(e)(i), relating to the inclusion in financial statements of refunds due and owing to past or presently enrolled students;

126.10(k)(1)(iii) Education Law § 5002(2)(b)(5), relating to the inclusion in any school record of the amount of any refund paid to any student;

126.10(k)(1)(iv) Education Law § 5005(a)(4), relating to disclosure to prospective and enrolled students of any refund policy;

126.10(k)(1)(v) Education Law §§ 5005(e) and 5005(f), relating to a tuition reimbursement fund claim form.

126.10(k)(2) Such schools shall also be exempt from the following requirements of this Part:

126.10(k)(2)(i) section 126.4(c)(6) of this Part, relating to data required to be submitted about tuition and other charges and method of payment;

126.10(k)(2)(ii) sections 126.7(b)(6) through (9) of this Part, relating to the

inclusion in enrollment agreements of any tuition charges or fees or method of payment;

126.10(k)(2)(iii) section 126.7(b)(15) of this Part, relating to any refund a school will make under certain prescribed circumstances;

126.10(k)(2)(iv) section 126.7(d) of this Part, except section 126.7(d)(3) thereof, relating to the inclusion in enrollment agreements of a reasonable adjustment of tuition and other fees, and any refund policies;

126.10(k)(2)(v) section 126.7(e) of this Part, relating to the option to use the refund policy of a nationally recognized accrediting agency and the use of the refund policy required by federal law;

126.10(k)(2)(vi) section 126.7(g) of this Part, relating to when refunds must be paid to students who withdraw, cancel, or are discontinued;

126.10(k)(2)(vii) section 126.9(a)(8) of this Part, relating to the inclusion in the school catalog of a schedule of fees or charges;

126.10(k)(2)(viii) section 126.9(a)(9) of this Part, relating to the inclusion in the school catalog of school policies and regulations governing the refund of any unused portion of tuition, fees and other charges in certain circumstances;

126.10(k)(2)(ix) section 126.9(a)(13)(i) of this Part, relating to state and federal financial aid only, except that any private grant, scholarship, or other financial assistance offered to students by the school, which shall not expose the student to any tuition liability, shall be included in such school's catalog;

126.10(k)(2)(x) section 126.9(a)(13)(ii)(d) of this Part, relating to the terms and expected schedules of repayment of any loan received by the student as a part of the student's financial aid;

126.10(k)(2)(xi) section 126.9(a)(18) of this Part, relating to the inclusion in the school catalog of information about tuition refunds from the Tuition Reimbursement Account (TRA);

126.10(k)(2)(xii) section 126.9(a)(19) of this Part, relating to the inclusion in the school catalog of requirement to include a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of a withdraw; and

126.10(k)(2)(xiii) section 126.11(a)(10) of this Part, relating to the maintenance of records of tuition, fees, public loans and grants, and their disbursement, by a school for seven years.

SECTION 126.11. RECORDS

126.11(a) All records and files of a school shall be maintained for seven years, except for permanent student records as provided in subdivision (b) of this section, unless specific disposition is authorized by the commissioner, and shall include:

126.11(a)(1) all approved courses of study, accompanied by letters from the department granting such approval;

126.11(a)(2) all correspondence with the department and other supervisory agencies;

126.11(a)(3) copies of all advertising, bulletins and other promotional materials;

126.11(a)(4) the attendance register, for each class, laboratory or session, progress in training and payments made to the school either by the student or on his behalf;

126.11(a)(5) records of administrative, supervisory and instructional staffs showing qualifications, approval by the department, teaching schedules and pupil load, attendance, contract salary and salary payments;

126.11(a)(6) inventories of equipment and consumable supplies;

126.11(a)(7) financial records in such form and kept in such manner as may be specified by the commissioner to facilitate the determination of the quality of instruction given and the ability of the school to discharge its obligations to its students;

126.11(a)(8) documentation of entrance requirements for each course or curriculum for which the student has enrolled;

126.11(a)(9) a completed copy of the student enrollment agreement contract signed by both an authorized agent of the school and the student prior to the time instruction begins;

126.11(a)(10) records of all tuition and fees owed and paid by the student; all loans and grants from public sources received by the student or the school on behalf of the student; and the complete record of the disbursement of such public funds;

126.11(a)(11) documentation of the award of any advanced credit due to previous academic or practical experience, and a record of any substitutes to the course or curriculum approved by the department as a result thereof;

126.11(a)(12) records of employment or educational status of each student graduating during a reporting period established by the commissioner, which include the name, address and telephone number of hiring employer, the job title and the starting date of employment, or the name and address of the educational institution and the date when the student started instruction at that institution.

126.11(a)(13) documentation of the academic standing evaluations and academic counseling

in the student record pursuant to subparagraph (2) of subdivision (e) of section 126.4 of this Part, on forms approved by the commissioner.

126.11(b) Student permanent records, compiled at the time of course or curriculum completion, discontinuance or withdrawal, shall be maintained in a single file for each student, for a period of not less than 20 years after the student completes the program, and contain the following information:

126.11(b)(1) name, address, and date of birth;

126.11(b)(2) date of enrollment;

126.11(b)(3) name of curriculum, course or courses taken;

126.11(b)(4) record of all final tests and grades earned for each course or curriculum;

126.11(b)(5) date of completion or discontinuance; and

126.11(b)(6) a notation whether a certificate or diploma was issued and the date issued.

126.11(c) No school shall discontinue operation or surrender its license or registration unless written notice of its intention to do so and a plan for maintenance of safe keeping of the records of the school is provided to the commissioner at least 30 days prior to such discontinuance or surrender. Such plan shall provide for the transportation of all student records set forth in subdivision (b) of this section in a manner and to a location prescribed by the commissioner. The cost of such transfer of records shall be paid for by the school. Schools with common ownership may, with the approval of the commissioner, store such records at another school with common ownership.

126.11(d) Upon the approval of the commissioner, schools may maintain student permanent records via electronic means or microfilm. Such media shall be in a format acceptable to the commissioner and transferred upon school closure or discontinuance of operation, in accordance with section 5001(8) of the Education Law and subdivision (c) of this section.

126.11(e) Schools receiving Federal funds shall maintain records required by the applicable Federal statutes and regulations.

SECTION 126.12. PRIVATE SCHOOL AGENT'S CERTIFICATE

126.12(a) No person shall receive any form of compensation or remuneration from any representative, agent, employee or officer of a licensed private career school for the purpose of soliciting, procuring, or enrolling students, unless such person is a salaried employee of the school and holds a valid private school agent's certificate. Each agent shall produce his or her agent certificate upon the request of the commissioner, the commissioner's designee, or any prospective student. A school shall submit an application for licensure for an agent on or before the first day of employment of such individual. Upon submission of a complete initial agent application for licensure, the commissioner shall issue a temporary approval certificate within five days of receipt of the application by mail, or on the same day at offices and times designated by the commissioner. Upon receipt of a temporary approval certificate, an applicant may procure, solicit or enroll any student. A temporary approval certificate shall be effective for up to 60 days, as determined by the commissioner, and shall be destroyed by the school upon the issuance or denial of the applicant's three-year certificate. An *initial agent application* shall mean an application submitted on behalf of an individual having never held an agent's certificate for the submitting school.

126.12(b) Application for a certificate shall be made on forms furnished by the commissioner. It may be made only by the school or schools which the agent is to represent. If an agent represents more than one school, each school must apply for a certificate. If the school employs more than one agent, a separate application must be filed for each agent. The application shall request such information as the commissioner may require, including information about whether the applicant has ever been convicted of a crime or whether criminal charges are now pending. The application must be accompanied by: two full-face photographs which are a good likeness of the applicant and are one inch by one inch in dimension; certification by two persons other than employers or coworkers attesting to the good moral character of the applicant; and a nonrefundable \$200 fee payable to the Education Department except that, pursuant to Section 5004(4-a), the school director may apply for an agent's certificate without incurring the application fee. In making application for an agent's certificate, the school shall certify that through the medium of sales manuals, bulletins or other similar means, the agent is fully informed as to its courses, services, charges, enrollment conditions and operating policies, including the refund policy. The school must further certify that it assumes full responsibility for the actions, statements and conduct of its agent, acting in its behalf, and that it uses an acceptable plan for the selection, training and supervision of the agent.

126.12(c) Application for the renewal of an agent's certificate shall be filed by mail no later than 30 days before the expiration of the current certificate at an office designated by the commissioner. A *renewal application* shall mean an application submitted prior to the expiration date of the current certificate. All other applications shall be filed as new applications. Certificates which have been renewed shall be valid for a period of three years from the expiration date of the certificate which has been renewed. It shall be accompanied by a nonrefundable \$200 fee payable to the Education Department.

126.12(d) In the event of the dismissal or resignation of an agent, the school shall notify the commissioner in writing within 10 days thereof. The agent's certificate shall be returned with such notification.

126.12(e) Agents shall not identify themselves or be identified as counselors or by other titles which mislead or tend to mislead the prospective student.

126.12(f) No school may procure, solicit or enroll students unless at least one salaried employee of the school is in receipt of an agent's certificate pursuant to this section.

SECTION 126.13. EXEMPTIONS

Entities that are exempt from article 101 of the Education Law and this Part are prescribed in section 5001(2) of the Education Law.

SECTION 126.14. DISCIPLINARY ACTIONS AND PENALTIES

126.14(a) Disciplinary action against schools.

In determining the penalty to be imposed upon a finding that disciplinary action against a school is warranted, in accordance with the provisions of Education Law, section 5003, the commissioner shall take into account the effect of the conduct which formed the basis for the disciplinary proceeding upon the students attending the school, the general public and any other affected individual or group. Prior to initiating action against schools during the initial two-year licensing period, the commissioner shall take into consideration the factors set forth in section 5003(1)(d) of the Education Law.

126.14(b) Disciplinary actions against private school agents.

126.14(b)(1) The commissioner, after affording a certified private school agent notice and an opportunity to be heard, may fine such agent, or suspend or revoke such agent's certificate at any time for failure to comply with the requirements of the Education Law or of this Part or for any other good cause.

126.14(b)(2) Revocation or suspension of a private school agent's certificate. Where the commissioner seeks to revoke or suspend a private school agent's certificate, the certificate holder shall be given reasonable notice of the nature of the proceeding and a statement sufficiently particular to give notice of the transactions and occurrences involved and the material elements of each cause of action against the certificate holder. The certificate holder shall also be given notice of an opportunity for a hearing in accordance with subparagraph (i) of this paragraph.

126.14(b)(2)(i) If a hearing is requested, the certificate holder shall be given reasonable notice of the time, place and nature of the hearing. The certificate holder may appear in person or may be represented at the hearing by an attorney, may respond and present evidence and argument on the issues involved, and may cross-examine witnesses. The hearing, at which a verbatim record shall be taken, shall be held before a hearing officer designated by the commissioner, who shall have the powers of a presiding officer in accordance with section 304 of the State Administrative Procedure Act. The strict rules of evidence shall not apply to such hearings, but the decision of the hearing officer shall be supported by substantial evidence in the record. Disposition may be made in any hearing by stipulation, agreed settlement, consent order, default or other informal method. The decision of the hearing officer shall be delivered or mailed forthwith to the certificate holder and to his or her attorney of record.

126.14(b)(2)(ii) If a hearing is not requested, the commissioner shall issue a determination based upon the evidence submitted in support of the charges and any additional evidence submitted by the certificate holder.

126.14(b)(3) Fines. Where the commissioner seeks to impose a fine on a certified private school agent for misconduct not warranting a more severe disciplinary penalty, the department shall serve notice of the charges upon the certificate holder either by personal service or

certified mail. Such notice shall specify the basis for the charges with sufficient particularity to apprise the certificate holder of the nature of the incidents or transactions leading to the charges, and shall contain a statement that unless an answer to the charges is received by the department within 20 days after personal service of the notice or within 25 days after service by certified mail, the charges will be deemed to be true and a fine will be imposed. The certificate holder may answer the charges and may submit evidence in written form, including affidavits, in support of such answer. If the commissioner finds that the charges of misconduct are supported by substantial evidence, the commissioner shall impose an appropriate fine and shall notify the certificate holder of such determination by mail. Failure to pay such a fine within four months after receipt of such notice shall constitute good cause for suspension or revocation of a private school agent's certificate.

126.14(b)(4) Indemnification. No employer of a private school agent other than a school may indemnify or otherwise reimburse an agent for fines imposed on the agent pursuant to this subdivision and Education Law, section 5004(7). If the agent demonstrates, to the satisfaction of the commissioner, that the action for which the agent was fined was undertaken because of explicit instructions from the school owner, director, or other school administrator, the commissioner shall take appropriate disciplinary action against the school in accordance with Education Law, section 5003, to require the school to indemnify or reimburse the agent the amount of the fine and pay to the commissioner an additional fine of an equal amount.

126.14(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees submitted by the schools to the department after the due date shall be subject to an interest penalty. The commissioner shall calculate the amount of the interest penalty as follows:

126.14(c)(1) For each due date, payments made within 30 days following such due date shall be subject to an interest penalty of one percent above the prevailing prime rate.

126.14(c)(2) Interest penalties not paid within 15 days of notification of the amount of the penalty may be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

SECTION 126.15. DISCLOSURE TO STUDENTS

126.15(a) For all prospective or enrolled students, schools shall provide the following information:

126.15(a)(1) all items required pursuant to section 5005 of the Education Law;

126.15(a)(2) pursuant to section 5005 of the Education Law, the materials required to be disseminated to all prospective or enrolled students shall be written in the language principally used in the sales presentation, the language of instruction as approved by the commissioner and English; and

126.15(a)(3) a statement, approved by the commissioner, which indicates that a student should review the approved school catalog to determine factual information about the school.

SECTION 126.16. TEACHOUT PLANS

All teachout plans developed pursuant to section 5006 of the Education Law shall be submitted to the department at least 30 days prior to the implementation of the teachout plan. Teachout plans submitted less than 30 days prior to the teachout may be denied based upon a school's inability to meet such a timeline.

SECTION 126.17. TUITION REIMBURSEMENT ACCOUNT

126.17(a) Pursuant to section 5007 of the Education Law, a student who was enrolled in a school which has not closed or ceased operation, and who has dropped out, is entitled to a full refund if the student has submitted a complaint form to the commissioner and the commissioner has determined that one or more of the following violations have occurred:

126.17(a)(1) any violation enumerated under section 5003(6)(b) of the Education Law;

126.17(a)(2) use of an unlicensed teacher in one or more of a student's courses;

126.17(a)(3) use of a substitute teacher contrary to the provisions contained in section 126.6(q) of this Part;

126.17(a)(4) use of an unlicensed agent to procure, solicit or enroll the student;

126.17(a)(5) use of fraudulent or improper claims by a licensed agent or school representative to procure, solicit or enroll the student;

126.17(a)(6) dismissal or termination of the student for other than just cause;

126.17(a)(7) failure of the school to offer the program as approved by the commissioner; and

126.17(a)(8) any additional violation in which the commissioner demonstrates that the student would not have enrolled in the school but for the commission of that violation.

126.17(b) Schools ceasing operation shall be responsible for paying the assessment charged for the tuition reimbursement account for the quarter in which the school ceases operation by the due date for such quarterly payment.

126.17(c) New schools. New schools, which did not operate in the year prior to licensure, will have no gross tuition upon which to be assessed until either the end of their first fiscal year or March 31st of the year after the school was licensed, whichever comes first. For schools whose fiscal year end comes before March 31st of the year after the school was licensed, a complete financial statement in compliance with the provisions set forth in section 5001(4)(e) of the Education Law is required. For new schools whose fiscal year comes later than March 31st after their initial licensure date, the school shall submit an unaudited reviewed income statement for the time period between initial licensure and March 31st, detailing the amount of gross tuition received during that period. Thereafter, complete financial statements shall be required as prescribed in section 5001(4)(e) of the Education Law.

126.17(d) For the purpose of calculating the balance of the tuition reimbursement account in accordance with section 5007(10)(g) of the Education Law, the commissioner shall determine the balance of the tuition reimbursement account on a quarterly basis on June first, September first, December first and March first, as defined for the collection of school assessments under section 5001(9) of the Education Law.

SECTION 126.18. ONLINE EDUCATION MARKETPLACES

126.18(a) If a prospective student pays all or part of his/her tuition and/or fees to an online education marketplace in connection with such student's enrollment at a school, the prospective student and the school shall execute an enrollment agreement in accordance with section 126.7 of this Part within 30 calendar days of receipt of such monies by the online education marketplace. If an enrollment agreement is not executed within 30 calendar days, then the online education marketplace shall refund all monies received to such prospective student within 40 calendar days of receipt of such monies.

126.18(b) If an enrollment agreement is executed within 30 calendar days of receipt of such monies, as described in subdivision (a) of this section, then the online education marketplace shall pay all monies it has received to the school with 10 calendar days of receipt of notification that an enrollment agreement has been executed. If the enrollment agreement is canceled pursuant to section 126.7(d)(9) of this Part, then the online education marketplace or school shall refund such monies to the student within 20 days of the cancellation of the agreement.

126.18(c) An online education marketplace shall not receive from a prospective student an amount greater than the tuition or fees to be charged by the school to the student.

126.18(d) An online education marketplace shall separately account for monies received from a prospective student for the payment of tuition or fees, and any remuneration and/or compensation received by the online education marketplace from a school in payment for services rendered to such school by the online education marketplace.

126.18(e) A school shall also separately account for tuition or fees transferred to the school by an online education marketplace on behalf of a student in payment of tuition or fees, and any payments made by the school to an online education marketplace for services rendered to the school by the online education marketplace.

126.18(f) Pursuant to section 5004(3)(b)(i)(5) of the Education Law, the Commissioner may take disciplinary action against an online education marketplace pursuant to section 5003 of the Education Law in accordance with the due process procedures set forth in subdivision (b) of section 126.14 of this Part, except that the Commissioner may impose any of the penalties set forth in section 5003 of the Education Law except those penalties set forth in subdivisions (6)(c)(3) and (6)(e) thereof.

126.18(g) An online education marketplace is prohibited from offering advertising/marketing services to an unlicensed private career school or uncertified ESL school.

SECTION 126.19. SCHOOL ACCOUNTABILITY

126.19(a) Annual statistical data reports. Each school shall report annual statistical data in a form and manner prescribed by the commissioner and each school owner shall certify that such data are true and accurate. The commissioner may require independently audited statistical data reports at the school's expense upon a determination that a school has provided false or inaccurate certified data reports. The reporting period shall be from July 1 to June 30. For the purposes of this section, unless otherwise specified, *school* shall mean *school* as it is defined in subdivision (p) of section 126.1 of this Title and certified English as a second language schools as defined in subdivision (x) of section 126.1 of this Title. For the purposes of this section, *contracted program start date* and *contracted program end date* shall mean the start date and end dates of the curriculum or course as identified on students' enrollment agreements.

126.19(a)(1) Licensed private career schools.

126.19(a)(1)(i) By no later than April 1, 2022, licensed private career schools shall submit statistical data reports from the immediately preceding reporting year, in a form and manner prescribed the commissioner. Statistical data reports shall use data elements similar to the previous reporting year, and shall include, but are not limited to, enrollment, completion, and job-placement data.

126.19(a)(1)(ii) By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, licensed private career schools shall submit statistical data from the immediately preceding reporting period for each approved curriculum or course, excluding approved non-occupational courses as defined in section 126.1(t) of this Title. This data shall include, but is not limited to, the following:

126.19(a)(1)(ii)(a) the number of individuals who submitted an application for admission to the program during the reporting period;

126.19(a)(1)(ii)(b) the number of applicants whose applications were accepted for admission during the reporting period;

126.19(a)(1)(ii)(c) the number of applicants whose applications were denied admission during the reporting period;

126.19(a)(1)(ii)(d) the number of students enrolled with a contracted program start and end date within the reporting period;

126.19(a)(1)(ii)(e) the number of students enrolled with a contracted program start date during the reporting period that have a contracted program end date in a subsequent specified reporting period;

126.19(a)(1)(ii)(f) the number of students enrolled with a contracted program start date in a previous reporting period that have a contracted program end date within the reporting period;

126.19(a)(1)(ii)(g) the number of students who successfully completed the program during the reporting period;

126.19(a)(1)(ii)(h) the number of students enrolled with a contracted program start date during the reporting period who dropped out or were withdrawn from the program during the reporting period;

126.19(a)(1)(ii)(i) the number of students enrolled with a contracted program start date during a previous specified reporting period who have dropped out or were withdrawn from the program during the reporting period;

126.19(a)(1)(ii)(j) the number of students who had a contracted program end date occurred during the reporting period but were still enrolled at the end of the reporting period;

126.19(a)(1)(ii)(k) the number of students who completed the program within the reporting period and who, within one-hundred and eighty days from the end of the reporting period, obtained employment in the occupation for which they were trained or in a related, comparable occupation;

126.19(a)(1)(ii)(l) the number of students who completed the program within the reporting period who were unavailable for employment due to the following reasons: death; incarceration; health issues that prevent employment; enrolled in a continuing postsecondary education program; and, active military duty;

126.19(a)(1)(ii)(m) the number of students enrolled in the program during the reporting period who received funding or credit for tuition and fees from each of the following sources: New York State tuition assistance program (TAP); federal Pell Grants; federal Title IV loans borrowed by the student; Direct Plus loans made to parents of dependent students; federal veterans benefits; private education loans; adult career and continuing education vocational rehabilitation funding; and any other credit extended by or on behalf of the institution that the student is obligated to repay;

126.19(a)(1)(ii)(n) the total cost of tuition for completion of the program as identified in the approved enrollment agreement; and

126.19(a)(1)(ii)(o) the total costs of fees for completion of the program as identified in the approved enrollment agreement.

126.19(a)(1)(iii) At the commissioner's direction, the data required to be reported in subparagraphs (a) through (l) of subparagraph (ii) of this paragraph shall be disaggregated by: students possessing a high school completion diploma or its equivalent and students who are enrolled without a high school diploma but who have been administered and have passed an ability to benefit-examination; full-time and part-time students; international students studying on federal student visas; and any

other demographic or sub-group characteristics that the commissioner may determine to be necessary to review the performance of the school.

126.19(a)(1)(iv) By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, licensed private career schools shall submit data for non-occupational courses, as defined in subdivision (t) of section 126.1 of this Part, offered in the preceding reporting period. Data submitted shall include but not be limited to the following:

126.19(a)(1)(iv)(a) the total number of non-occupational courses offered during the reporting period;

126.19(a)(1)(iv)(b) the total number of students enrolled in non-occupational courses during the reporting period; and

126.19(a)(1)(iv)(c) the total number of students completing non-occupational courses during the reporting period.

126.19(a)(2) Certified English as a second language schools. By no later than April 1, 2023, and no later than April 1 of each calendar year thereafter, certified English as a Second Language Schools shall submit statistical data from the preceding reporting period, for each approved program. This data shall include, but is not limited to:

126.19(a)(2)(i) the number of students enrolled in the program for the first time during the reporting period, that have a contracted program start date and end date within the reporting period;

126.19(a)(2)(ii) the number of students enrolled in the program for the first time during the reporting period that have a contracted program start date within the reporting period and a contracted program end date in a subsequent specified reporting period;

126.19(a)(2)(iii) the number of students repeating the program during the reporting period, that have a contracted program start date within the reporting period and a contracted program end date within the reporting period;

126.19(a)(2)(iii) the number of students repeating the program during the reporting period, that have a contracted program start date within the reporting period and a contracted program end date in a subsequent specified reporting period;

126.19(a)(2)(iv) the number of students who successfully completed the program during the reporting period without the need to repeat it;

126.19(a)(2)(v) the number of students enrolled during the reporting period who dropped out or who were withdrawn from the program during the reporting period;

126.19(a)(2)(vi) the number of students enrolled during a previous specified reporting period who have dropped out or who were withdrawn from the program during the

reporting period;

126.19(a)(2)(vii) the number of students whose contracted program end date occurred during the reporting period but who were still enrolled at the end of the reporting period;

126.19(a)(2)(viii) the number of students enrolled who were international students studying on a student visa or other visa;

126.19(a)(2)(ix) the total cost of tuition for completion of the program as identified on the approved enrollment agreement; and

126.19(a)(2)(x) the total costs of fees for completion of the program as identified in the approved enrollment agreement.

126.19(b) Data analysis, reporting, and use.

126.19(b)(1) Licensed private career schools. The commissioner shall analyze the statistical data submitted by licensed private career schools pursuant to paragraph (1) of subdivision (a) of this section and shall also calculate the completion rate and job placement rate for each approved curriculum or course (excluding non-occupational courses as defined in section 126.1(t) of this Part). The commissioner may also calculate school-level averages of completion and job placement rates.

126.19(b)(1)(i) The completion rate shall be calculated as follows: the number of students who successfully completed the program during the reporting period divided by the number of students who enrolled in a program with a contracted program end date within the reporting period.

126.19(b)(1)(ii) The job placement rate shall be calculated as follows: the number of students who successfully completed the program within the reporting period who, within one-hundred and eighty days from the end of the reporting period, obtained employment in the occupation for which they were trained or in a related, comparable occupation divided by the number of students who completed the program within the reporting period. Students who completed programs within a reporting period but who are unavailable for employment due to the following reasons shall be excluded from the denominator of the job placement rate calculations: death; incarceration; health issues that prevented employment; enrollment in a continuing postsecondary education program; and active military duty.

126.19(b)(2) Certified English as a second language schools. The commissioner shall analyze the statistical data submitted by certified English as a Second Language (ESL) Schools pursuant to paragraph (2) of subdivision (a) of this section and shall also calculate the completion rate for all ESL curricula. The completion rate shall be calculated as follows: the number of students who successfully completed the program during the reporting period divided by the number of students enrolled in a program with a contracted program end date within the reporting period.

126.19(b)(3) The commissioner may post on the department's website in a form and manner determined by the commissioner, a summary report for each school that includes but is not limited to the data collected pursuant to this section, determined by the commissioner to be useful for consumers to make informed decisions regarding such schools.

126.19(b)(4) The school owner of each school shall be responsible for reporting data for each school curriculum pursuant to paragraphs (1) and (2) of this subdivision, except for non-occupational courses as defined in subdivision (t) of section 126.1 of this Part, clearly and prominently on the school's website, the school catalog, and any advertising or promotional materials that reference such data. Schools may not satisfy the required disclosure of department calculated completion and job placement rates, or any other data required to be reported under this section, with alternate measures or methods that may be required by accreditors or other regulatory bodies. In instances where accreditors or other regulatory bodies require public disclosure but will not accept department calculated or reported measures, both data shall be reported in the sources identified above. The data shall include:

126.19(b)(4)(i) the most recent department-calculated completion rates;

126.19(b)(4)(ii) the most recent department-calculated job-placement rates;

126.19(b)(4)(iii) the total costs of program completion, including tuition and fees; and

126.19(b)(4)(iv) the normal time to program completion.

126.19(b)(5) The commissioner shall review and consider the data reported by schools and the corresponding completion and job placement rates calculated by the department pursuant to this section in making a determination to approve or deny an application for school licensure or certification pursuant to 126.10(a), 126.10(b), and 126.10(j)(2) of this Part.

126.19(b)(6) The commissioner shall review and consider all of the data reported by schools and the completion and job placement rates calculated by the department pursuant to this section in making a determination of whether or to reapprove or deny a curriculum, and in making a determination of whether to approve or deny similar curricula proposed or offered by the school.

126.19(c) Data, reports, and correspondence with other oversight entities. Schools shall submit, upon request from the commissioner, any data, reports, information, or correspondence to or from a school's accrediting body or other entity from which the school receives authorization, funding, or oversight, that the commissioner deems necessary to the Department's oversight of the school. Information requested by the commissioner shall be provided no later than five business days from the date of the request.